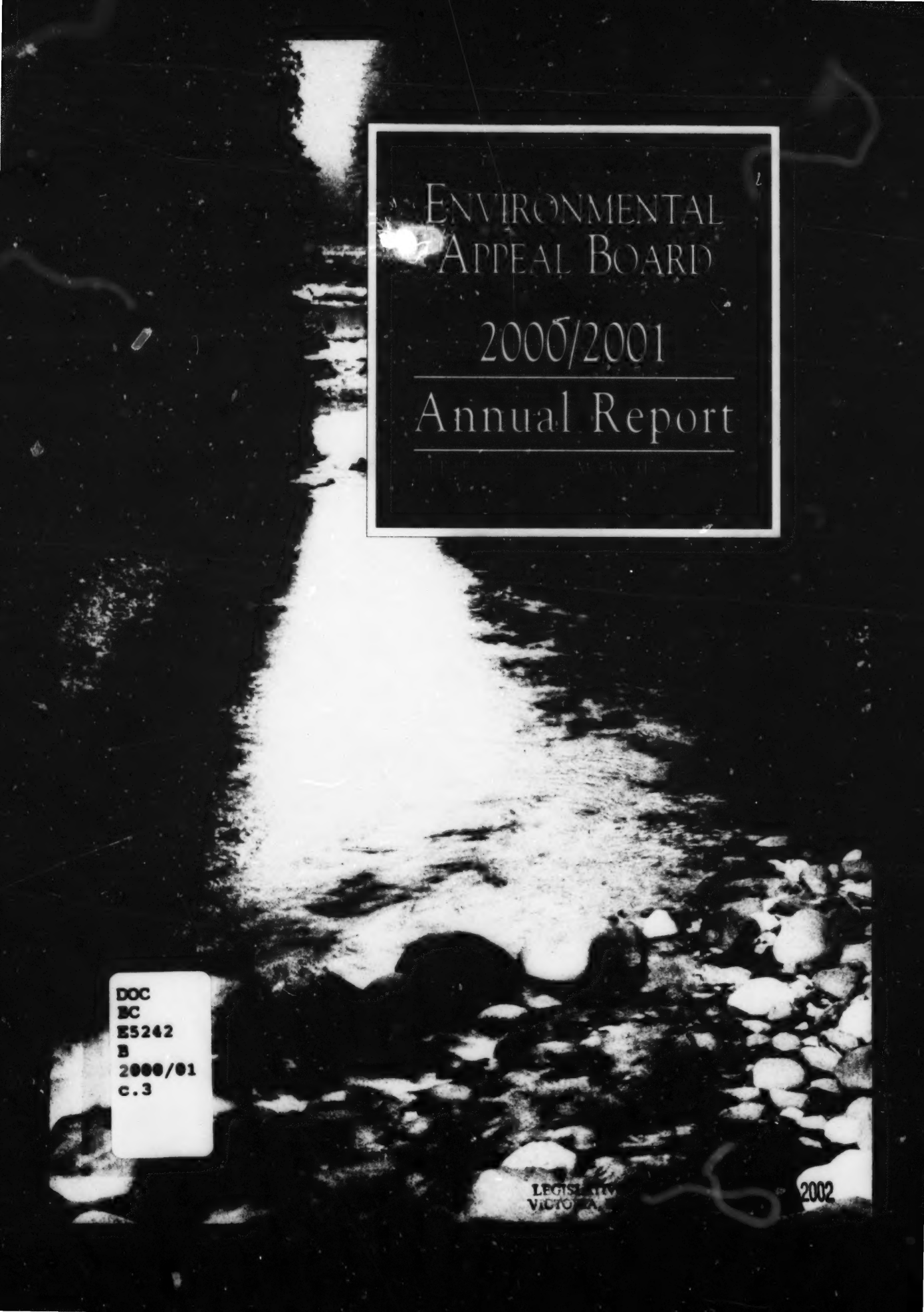


Environmental Appeal Board

2000/2001

Annual Report

DOC
BC
E5242
B
2000/01
c.3

LEGISLATIVE
VICTORIA

2002

LEGISLATIVE LIBRARY OF BRITISH COLUMBIA
3 3298 00264 0242
102-04213/

BRITISH COLUMBIA

Environmental Appeal Board

Fourth Floor, 747 Fort Street
Victoria, British Columbia
Telephone: (604) 387-3464
Facsimile: (604) 356-9923

Mailing Address:
P.O. Box 9425
Stn Prov Govt
Victoria, British Columbia
V8W 9V1

The Honourable Joyce Murray
Minister of Water, Land and Air Protection
Parliament Buildings
Victoria, British Columbia
V8V 1X4

The Honourable Stan Hagen
Minister of Sustainable Resource Development
Parliament Buildings
Victoria, British Columbia
V8V 1X4

The Honourable Colin Hansen
Minister of Health Services and Health Boards
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Ministers:
I respectfully submit herewith the annual report of the Environmental Appeal Board for the period April 1, 2000 through March 31, 2001.

Yours truly,

Alan Andison
Chair
Environmental Appeal Board

AR 00/01

Table of Contents

Message from the Chair	5
Introduction	6
The Board	7
Board Membership	7
The Board Office	8
Policy on Freedom of Information	8
Legislative Amendments Affecting the Board	9
The Appeal Process	10
Recommendations	11
Statistics	13
Summaries of Environmental Appeal Board Decisions	15
Summaries of Court Decisions Related to the Board	41
Summaries of Cabinet Decisions Related to the Board	45
Appendix I Legislation and Regulations	46

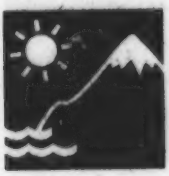
Canadian Cataloguing in Publication Data
British Columbia. Environmental Appeal Board.
Annual report of the Environmental Appeal Board.
-- 1990 / 91 -

Annual.
Report year ends June 30.
ISSN 11-88-021X

1. British Columbia. Environmental Appeal Board - Periodicals. 2. Environmental law - British Columbia - Periodicals. 3. Pollution - Law and legislation - British Columbia - Periodicals. I.

KEB421.A49E58 354.7110082'321 C91-092316-7

ENV126788.1192



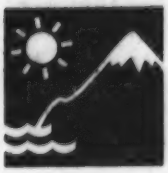
Message from the Chair

Alan Andison

I am pleased to submit the tenth Annual Report of the Environmental Appeal Board.

I was appointed Chair of the Board on July 27, 2000. The number of appeals filed with the Board continued to decline slightly this year. The number of appeals filed in a year peaked at 200 in 1998/99, then decreased slightly to 170 appeals in 1999/00 and to 160 this year. The number of appeals filed under the *Health Act*, *Pesticide Control Act*, and *Wildlife Act* increased significantly, while the number of appeals filed under the *Water Act* dropped significantly. This year the largest numbers of appeals filed were under the *Pesticide Control Act*, while the most complex remained *Waste Management Act* appeals.

A number of Board members have departed during this reporting period. On behalf of the entire Board, I wish to thank Toby Vigod, Judith Lee, Helmut Klughammer, and Christie Mayall for their hard work and contributions to the Board. With their departure, the Board has gained a number of new members. I wish to welcome Joanne Dunaway, Margaret Eriksson, Tawfiq Popatia and Joan Young to the Board and I look forward to working with them in the coming year.



Introduction

The Environmental Appeal Board hears appeals from administrative decisions related to environmental issues. The information contained in this report covers the period of time between April 1, 2000 and March 31, 2001.

The report provides an overview of the structure and function of the Board and how the appeal process operates. It contains statistics on appeals filed, hearings held and decisions issued by the Board within the report period. It also contains the Board's recommendations for legislative changes to the statutes and regulations under which the Board has jurisdiction to hear appeals. Finally, summaries of the decisions issued by the Board during the report period are provided and sections of the relevant statutes and regulations are reproduced.

Decisions of the Environmental Appeal Board are available for viewing at the Board office, on the Internet, and at the following libraries:

- Legislative Library
- Corporate Services Library, Ministries of Water, Land and Air Protection, and Sustainable Resource Management
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Court House Library Society
- West Coast Environmental Law Library

Decisions are also available through the Quicklaw Database.

Information about the Environmental Appeal Board is available from the Environmental Appeal Board Office and on the Board's website. Detailed information on the Board's policies and procedures can be found in the Environmental Appeal Board Procedure Manual. Pamphlets explaining the appeal procedure under each of the relevant statutes are also available. Please feel free to contact the office if you have any questions, or would like additional copies of this report. The Board can be reached at:

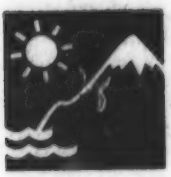
Environmental Appeal Board
Fourth Floor, 747 Fort Street
Victoria, British Columbia
V8W 3E9

Telephone: (250) 387-3464

Facsimile: (250) 356-9923

Website Address:
www.eab.gov.bc.ca

Mailing Address:
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1



The Board

The Environmental Appeal Board is an independent agency established under the *Environment Management Act* that hears appeals from administrative decisions made under six statutes (the "Statutes"). Three of the Statutes are administered by the Ministry of Water, Land and Air Protection. They are the *Pesticide Control Act*, the *Waste Management Act* and the *Wildlife Act*. Two of the statutes are administered by the Ministry of Sustainable Resource Development. They are the *Commercial River Rafting Act* and the *Water Act*. The sixth statute, the *Health Act*, is administered by the Ministry of Health Services and Health Boards.

Board Membership

The Board members are appointed by the Lieutenant Governor in Council (Cabinet) under section 11(3) of the *Environment Management Act*. The members are drawn from across the Province, representing diverse business and technical experience, and have a wide variety of perspectives. Board membership consists of a full-time chair, one or two part-time vice-chairs, and a number of part-time members.

The Board	From
Chair	
Toby Vigod (to July 27, 2000)	Victoria
Alan Andison (from July 27, 2000)	Victoria
Vice-chair	
Judith Lee (to June 1, 2000)	Vancouver
Jane Luke	Vancouver
Cindy Derkaz	Tappen
Members	
Sheila Bull	Salt Spring Island
Robert Cameron	North Vancouver
Richard Cannings	Naramata
Tracey Cook	Victoria
Don Cummings	Richmond
Joanne Dunaway (from October 26, 2000)	Vancouver
Margaret Eriksson (from October 26, 2000)	Vancouver
Jackie Hamilton	Victoria
Fred Henton	Nanoose Bay
Katherine Hough	New Westminster
Marilyn Kansky	Victoria
Helmut Klughammer (to October 29, 2000)	Nakusp
Ken Maddox	Prince George
Christie Mayall (to October 29, 2000)	Williams Lake
Tawfiq Popatia (from October 26, 2000)	Burnaby
Carol Quin	Hornby Island
Bob Radloff	Prince George
Barbara Thomson	Victoria
Phillip Wong	Richmond
Joan Young (from October 26, 2000)	Victoria

The Board Office

The Environmental Appeal Board office staffs nine full-time employees reporting to a General Counsel/Executive Director and the Chair. The office provides registry services, legal advice, research support, systems support, financial and administrative services, training and communications support for the Board.

The Environmental Appeal Board shares its staff and its office space with the Forest Appeals Commission.

The Forest Appeals Commission, set up under the *Forest Practices Code of British Columbia Act*, hears appeals from forestry-related administrative decisions made under that Act, the *Forest Act* and the *Range Act*, in much the same way that the Board hears environmental appeals.

Each of the tribunals operates completely independently of one another. Supporting two tribunals through one administrative office gives each tribunal greater access to resources while, at the same time, cutting down on administration and operation costs. In this way, expertise can be shared and work can be done more efficiently.

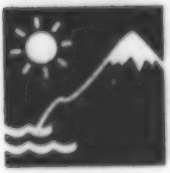
Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Board by one party must also be provided to all other parties to the appeal.

If a member of the public requests information regarding an appeal, that information may be disclosed. The Board is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act.

Unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*, it will be disclosed.

Parties to appeals should be aware that information supplied to the Board is subject to public scrutiny and review.



Legislative Amendments Affecting the Board

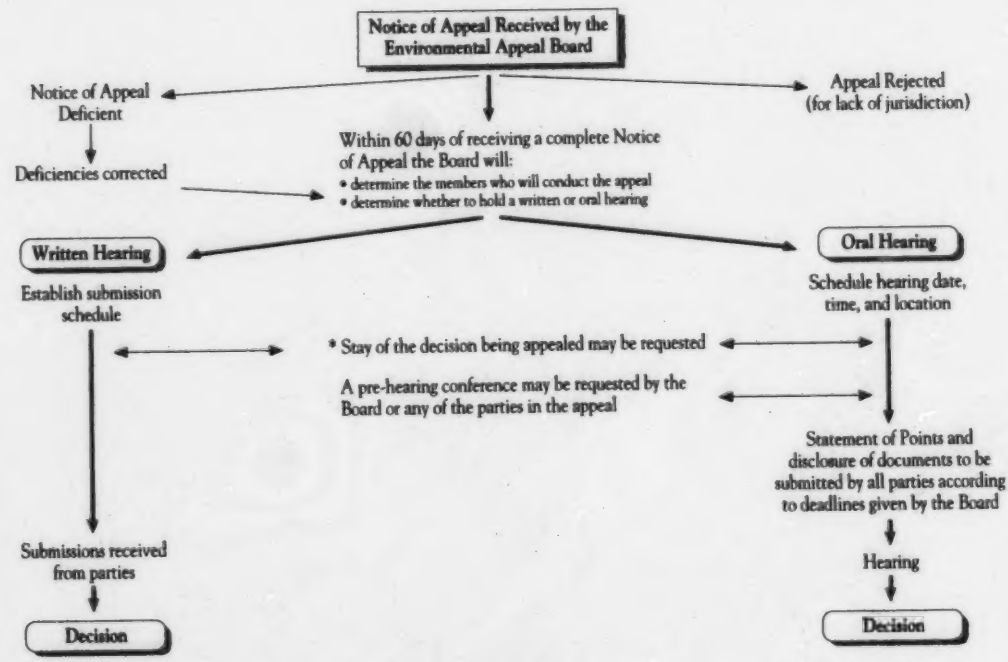
In this report period, there were no significant amendments to the statutes and regulations under which the Board has jurisdiction to hear appeals.

The Appeal Process

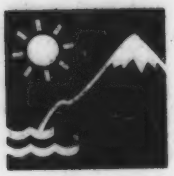
The *Environment Management Act* and the *Environmental Appeal Board Procedure Regulation* (the "*Regulation*") set out the general powers and procedures of the Board. The Board's authority is further defined in the Statutes and regulations under which the Board has jurisdiction to hear appeals.

In order to ensure that the appeal process is open and understandable to the public, the Board has developed the Environmental Appeal Board Procedure Manual. The manual contains information about the Board itself, the legislated procedures that the Board is required to follow and the policies the Board has adopted to fill in the procedural gaps left by the legislation.

The following is a brief summary of the appeal process. For more detailed information, a copy of the Board's Procedure Manual can be obtained from the Environmental Appeal Board office, or from the Board's website.


Notice of Appeal Received by the Environmental Appeal Board
Notice of Appeal Deficient
Deficiencies corrected
Appeal Rejected (for lack of jurisdiction)
Within 60 days of receiving a complete Notice of Appeal the Board will:
• determine the members who will conduct the appeal
• determine whether to hold a written or oral hearing
Written Hearing
Establish submission schedule
Oral Hearing
Schedule hearing date, time, and location
* Stay of the decision being appealed may be requested
A pre-hearing conference may be requested by the Board or any of the parties in the appeal
Statement of Points and disclosure of documents to be submitted by all parties according to deadlines given by the Board
Submissions received from parties
Hearing
Decision
Decision

* The Board's authority to issue a stay varies from one statute to the next.



Recommendations

The Board is not required by legislation to make recommendations for amendments to the Statutes in its annual report. However, it is hoped that making recommendations will lead to changes that promote fairness, accessibility and efficiency. The following are recommendations from the Board:

1. *Health Act*

In the Board's 1998/99 annual report, it recommended that the *Health* Act and regulations be amended to provide a 30-clear-day appeal period from the date of notification. Under sections 3.2 and 3.3 of the *Sewage Disposal Regulation*, a person who is issued a permit to construct, install, alter or repair a sewage disposal system must post a notice not more than three days from the date that the permit was issued. Section 3.4 of the *Regulation* provides that the notice must be published as soon as possible, but no more than 10 days after the permit is issued. When notification is received by way of posting or advertisement, the appeal period is reduced by up to 10 days.

The Board continues to be concerned that this results in confusion as to when the appeal period begins and ends. The Board is concerned that this may result in unfairness and uncertainty to appellants, property owners and others affected by the appeal process. It receives a number of inquiries and complaints on this matter annually.

The *Health* Act provides for a 30-day appeal period for all persons affected by the issuance or refusal of a sewage disposal permit. To achieve this legislated objective, the Board reiterates its previous recommendation that the legislation be amended to ensure that all parties are given a full 30 days to appeal from the date of posting, publication or receipt of the decision.

2. *Environment Management Act*

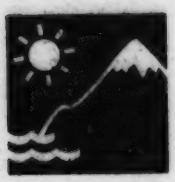
The Board continues to recommend that the *Environment Management* Act be amended to provide the Board with the power to order pre-hearing disclosure of documents. The Board has no authority to order pre-hearing exchange of documents except through the issuance of a summons under the *Inquiry* Act. A summons issued under the *Inquiry* Act requires witnesses to attend before the Board and bring certain documents with them. The Board finds that this is an inadequate and administratively onerous method of providing for pre-hearing disclosure of documentation. An amendment to

the *Environment Management Act* to give the Board the authority to order that parties exchange documentation in advance of a hearing without the need for a summons would serve to expedite proceedings before the Board.

3. *Wildlife Act*

The Board continues to recommend that the *Angling and Scientific Collection Regulation* be amended to clarify a number of matters concerning the licensing of angling and angler guides. During this reporting period, the Board dealt with several appeals concerning this *Regulation* and the relevant provisions of the *Wildlife Act*, and found the legislation to be unclear in several ways. There is a need to clarify the provisions in the *Regulation* regarding unspecified tributaries and their designation as classified waters. There is also a need to clarify what information should be contained in the angling guide operating plans submitted annually by applicants for angler guide licences, as these plans form the terms and conditions of an angling guide licence. In addition, if the Ministry intends to continue to use angling use plans as a management tool, the *Wildlife Act* and the *Regulation* should be amended to clearly define what an angling use plan entails, the process involved in developing such a plan, the approval process and its relationship to the granting of licences and quotas.

Finally, the Board continues to note that there is a need to pass a regulation pursuant to section 53(g) of the *Wildlife Act*, as regional managers currently have no legal authority to dispose of unallocated angler days which have reverted to the Crown by way of issuing a licence under section 52(1).



Statistics

The following tables provide information on the appeals filed with the Board during the report period.

Between April 1, 2000 and March 31, 2001 a total of 160 appeals were filed with the Board against 108 administrative decisions.

April 1, 2000 – March 31, 2001

Total appeals filed		**160**
Number of administrative decisions appealed		**108**
Appeals abandoned, withdrawn, or rejected		**82**
Hearings held		
Oral hearings held		30
Written hearings held		10
Total hearings held		**40**
Total oral hearing days		**73**
Decisions issued		
Final decisions		56
Appeals allowed	5	
Appeals allowed in part	3	
Appeals dismissed	47	
Referred back to original decision-maker	1	
Reconsideration of a final decision		1
Decisions on preliminary matters		55
Consent orders		10
Costs		5
Costs awarded	1	
Costs denied	4	
Security for Costs		0
Security awarded		0
Security denied		0
Total decisions issued		**127**

Appeal Statistics by Act

	Health Act	Pesticide Control Act*	Waste Management Act	Water Act	Wildlife Act
Appeals filed during report period	39	52	29	19	21
Number of administrative decisions appealed	31	15	23	19	20
Appeals abandoned, withdrawn or rejected	25	14	15	18	10
Hearings held					
Oral hearings	7	1	8	9	5
Written hearings	2			2	6
Total hearings held	9	1	8	11	11
Total hearing days	7	19	26	16	5
Decisions issued					
Final decisions	14	18	4	9	11
Reconsideration	1				
Preliminary applications	4	41	9		1
Costs	1	1	2		1
Consent orders			1	5	4
Total decisions issued	20	60	16	14	17

This table provides a summary of the appeals filed, hearings held and decisions issued by the Board during the report period, categorized according to the statute under which the appeal was brought. There were no appeals filed, heard or decisions issued under the *Commercial River Rafting and Safety Act* during the report period.

* There were a number of decisions on applications under these statutes which applied to groups of five or more appeals.

This table provides an overview of the total appeals filed, hearings held, and decisions issued by the Board during the report period. It should be noted that the number of decisions issued and hearings held during the report period does not necessarily reflect the number of appeals filed for the same period, because the appeals filed in previous years may have been heard or decided during the report period.

It should also be noted that two or more appeals may be heard together.

Decisions issued by the Board by Act

In an appeal, the Board will decide whether to allow the appeal, dismiss the appeal or return the matter back to the original decision-maker with directions. The Board may also be required to deal with a number of preliminary matters such as requests for stays, applications regarding standing and questions regarding the Board's jurisdiction.

The following tables provide a summary of decisions issued by the Board, including any decisions regarding preliminary matters dealt with by the Board.

Health Act

Administrative Decision Appealed	Preliminary Matter	Appeal Allowed	Appeal Dismissed	Consent Order	Application for Costs	Reconsideration
Refusal to issue a permit		1	6			1
Issuance of a permit	4	1	6		1	

Pesticide Control Act

Administrative Decision Appealed	Preliminary Matter	Appeal Allowed	Appeal Allowed in Part	Appeal Dismissed	Referred back to Original Decision-maker	Consent Order	Application for Costs
Refusal to issue a permit							
Issuance of a permit	41	1		17			1
Licence suspension							

Waste Management Act

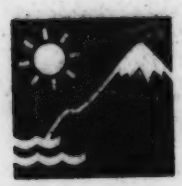
Administrative Decision Appealed	Preliminary Matter	Appeal Allowed	Appeal Dismissed	Appeal Allowed in Part	Referred back to Original Decision-maker	Consent Order	Application for Costs
Issuance of a permit	2				1		1
Amendment of a permit				1			
Remediation order	5	1					
Issuance/amendment of a pollution abatement order and/or pollution prevention order	2		1			1	1

Water Act

Administrative Decision Appealed	Appeal Allowed	Appeal Dismissed	Consent Order
Issuance of a licence		1	1
Refusal to issue a licence	1		2
Condition of licence			1
Cancellation or suspension of a licence			1
Issuance of an order		3	
Assessment		1	
Amendment of final licence		2	
Engineer's approval		1	

Wildlife Act

Administrative Decision Appealed	Preliminary Matter	Appeal Allowed	Appeal Allowed in Part	Appeal Dismissed	Consent Order	Application for Costs
Refusal to issue a licence or permit				3		
Conditions on a licence				2		
Suspension or cancellation of a licence or permit	1	1	1	4	4	1



Summaries of Environmental Appeal Board Decisions

April 1, 2000 ~ March 31, 2001

The following are summaries of decisions issued by the Environmental Appeal Board between April 1, 2000 and March 31, 2001. They are organized according to the statute under which the Ministry or independent health board official's decision was appealed.

Commercial River Rafting Safety Act

No appeals were heard under the *Commercial River Rafting Safety Act* during the report period.

Health Act

1999-HEA-005 Abbeyfield of Denman Society v. Environmental Health Officer
Decision Date: January 16, 2001
Panel: Jane Luke

The Abbeyfield of Denman Society appealed a decision of the Environmental Health Officer ("EHO") refusing to issue a permit to construct a sewage disposal system on a property located on Denman Island. The Appellant sought an order that a permit be issued to allow the construction of a sewage disposal system. The EHO had rejected the application on the basis that the public health would not be safeguarded with the proposed design due to possible groundwater contamination.

The Board found that the proposed low rate intermittent sand filter system could not be reasonably characterized as a "package treatment plant system" or "conventional septic tank system" under section 6 of the *Sewage Disposal Regulation*. While schedules 2 and 3 of the *Regulation* therefore do not apply to the proposed system, the EHO retains the discretion to approve such systems under section 3(3) of the *Regulation*, if the system does not pose a threat to public health. In assessing the safety of the proposed system, the EHO may consider relevant provisions of those schedules when deciding whether to issue a permit. The Board found that the EHO raised reasonable concerns regarding the depth of the available soil, the type of soil present and the variability of site measurements. This combination of factors created an unacceptable risk to the public health.

The Board also found it reasonable for the EHO to require, on the basis of insufficient depth of treatable soils and other factors, larger setbacks than had been proposed. The Board further found that it was unreasonable to require a strata corporation to accept responsibility for operation and maintenance of the system when no strata corporation was yet in existence. The Board also found that the EHO was unreasonable in refusing to issue a sewage disposal

permit on the basis of zoning considerations. The only relevant factors to take into account are those associated with whether the proposed system complies with the *Health Act*, the *Regulation*, and, more specifically, whether a threat is posed to the public health. The appeal was dismissed.

1999-HEA-016 Grace Creer (formerly Heslop) v. Environmental Health Officer
Decision Date: April 4, 2000
Panel: Jane Luke

Mrs. Creer (formerly Heslop) appealed a decision of the EHO refusing to issue a permit to repair a privy. The privy would service a new cabin on a recreational property in the Cypress Bowl area of West Vancouver. The previous cabin had burned down in 1960. The EHO rejected the permit application on the grounds that there was no evidence of an existing privy on the property, and the proposed privy would not accommodate all domestic sewage emanating from the proposed cabin, thereby constituting a health hazard.

The Panel found that there was evidence of a previous privy although it had fallen into disrepair and was almost unrecognizable. It also found that a privy was an adequate sewage disposal system for the proposed recreational use of the property and, provided certain conditions were met, it would not create a health hazard. The Panel therefore directed the EHO to issue a permit to repair the privy under section 7(2) of the *Sewage Disposal Regulation*, with the condition that there be no bathroom or kitchen plumbing in the new cabin. The appeal was allowed.

1999-HEA-027 Betty Boileau v. Environmental Health Officer (Edward Shaw, Permit Holder)
Decision Date: April 7, 2000
Panel: Don Cummings

Betty Boileau appealed a decision of the EHO to issue a permit for the construction of a conventional sewage disposal system to serve a two-bedroom home on a lot near Magna Bay on Shuswap Lake. Mrs. Boileau runs a commercial campground on her property, and was concerned that the permitted sewage disposal system on the adjacent property would contaminate her groundwater well. Mrs. Boileau sought an order cancelling the permit.

The Board found that the Permit Holder satisfied the setback requirement from Mrs. Boileau's well and had sufficient depth of undisturbed soil between the ground surface and the ground water table to satisfy regulatory requirements. The Board also found that high lake levels will not adversely impact the absorption field. The Board concluded that the permitted system posed no real or significant risk of contamination to Mrs. Boileau's domestic water well. The appeal was dismissed.

2000-HEA-002 Vihar Construction Ltd. v. Environmental Health Officer
Decision Date: June 26, 2000
Panel: Cindy Derkaz

This was an appeal by Vihar Construction Ltd. ("Vihar") of a decision of the EHO, refusing to issue a permit for a sewage disposal system on property located on Lake Kathlyn near Smithers, B.C. Vihar sought an order that a permit be issued to allow the construction of a sewage disposal system.

The Board found that the EHO correctly exercised his discretion under section 7(1) of the *Sewage Disposal Regulation* when he rejected Vihar's permit application. The Board found there was a reasonable concern that the location of the proposed contoured raised bed absorption field could be subject to flooding from Lake Kathlyn, and that there was an insufficient depth of natural soil. The appeal was dismissed.

2000-HEA-006, 2000-HEA-007, 2000-HEA-009 Denise Jeffery, Robert Jeffery, and Peter Bogaerts v. Environmental Health Officer (Don and Charlotte Harris, Permit Holders; Glendon Biofilters Canada Inc., Third Party)

Decision Date: June 28, 2000

Panel: Toby Vigod, Don Cummings, Jackie Hamilton

Denise Jeffery, Robert Jeffery and Peter Bogaerts appealed a decision of the EHO to issue a permit for a sewage disposal system on waterfront property near Courtenay. The Appellants sought an order rescinding the permit.

The Board found that the definition of "sewage disposal system" in section 1(1) of the *Sewage Disposal Regulation* makes it clear that systems other than those involving a septic tank or package treatment plant discharging into a ground absorption system are contemplated under the *Regulation*. The Board found, therefore, that the proposed sewage disposal system, which included the Glendon Biofilter, complied with the *Health Act* and *Regulation*.

The Board also found that the technology design of the Glendon Biofilter system was adequate to protect public health. The Board found there to be a reasonable level of assurance that water quality and shellfish in Baynes Sound would not be adversely affected by the installation. The Board ordered, however, that the EHO revise the permit to address the issue of differential settling. The appeal was dismissed. The Permit Holders' request for costs was denied.

2000-HEA-010 Don Saywell v. Environmental Health Officer

Decision Date: July 14, 2000

Panel: Toby Vigod

Don Saywell appealed a decision of the EHO refusing to issue Mr. Saywell a permit for a sewage disposal system on the grounds that the proposed absorption field did not meet the 30.5-metre setback to a neighbour's well. After Mr. Saywell had applied for the permit, his neighbours dug a well on the adjacent property, approximately 10 feet from the property line. On the basis of this development, the EHO refused to issue the permit to Mr. Saywell.

The Board found that, while the actions of Mr. Saywell's neighbours may have been motivated by their desire to prevent him from developing his property in the proposed manner, there was no clear evidence of this intention. Based on the available information, the Board found that it must follow the reasoning of the B.C. Supreme Court in *de Goutiere v. Environmental Appeal Board and Albaco Industries* and refuse the permit. The Board found there was insufficient evidence to conclude that the facts of this appeal were distinguishable, at law, from those in *de Goutiere*. The appeal was denied.

2000-HEA-011 Shawn Galbraith v. Environmental Health Officer

Decision Date: September 14, 2000

Panel: Don Cummings

Shawn Galbraith appealed a decision of the EHO to refuse to issue a permit to construct a sewage disposal system because of a high groundwater level. The Appellant sought an order rescinding the EHO's decision.

The Board found that the proposed sewage disposal system posed a potential threat to public health, as the high groundwater table and the lack of success experienced with controlling it to date showed that there was a risk of inadequate effluent treatment. The Board agreed that it was appropriate to refuse the permit. The appeal was dismissed.

2000-HEA-018 Gina and Armin Maerkl v. Environmental Health Officer (C. Derek Hood, Permit Holder)

Decision Date: December 7, 2000

Panel: Don Cummings

Gina and Armin Maerkl appealed a decision of the EHO to issue a permit for the construction of a sewage disposal system to serve a four-bedroom home located on Denman Island. The permitted system consisted of a conventional package treatment plant with pressure distribution to a drainfield. The Maerkls claimed that the drainfield does not meet the requirements set out in the *Sewage Disposal Regulation* for percolation rates, ground slope, distance to a watercourse, and depth to groundwater table. The Maerkls were also concerned that the permitted system may not protect the public health due to system failure during power outages and improper maintenance. The Maerkls sought an order rescinding the permit.

The Board found that the percolation tests had been properly conducted, and that the test results were within the expected range for the type of soil. The Board also accepted that the ground slope at the drainfield was within the acceptable range and, even if it wasn't, there were adequate safeguards in place. However, the Board found that the permit should be re-assessed on the basis that the Permit Holder had constructed a ditch, designed to change the flow of surface water drainage, after the permit was issued. In particular, the Board found that the groundwater test holes and the drainfield setbacks should be re-examined to assess the effects of the new ditch. The Board also found that the EHO should consider the impact of power failures and review the maintenance schedule of the package treatment plant. Accordingly, the appeal was allowed and the permit was rescinded.

2000-HEA-019 Dean Ellis v. Environmental Health Officer

Decision Date: January 15, 2001

Panel: Alan Andison

Dean Ellis appealed a decision of the EHO to refuse to issue a permit for a sewage disposal system on a property located on Hornby Island. The Appellant sought an order that a permit be issued to allow the construction of a sewage disposal system. The Appellant had been issued a permit to construct a system with a package treatment plant that used a tertiary treatment process (disinfection), but he wished to install a less expensive package treatment plant.

The Board accepted the evidence of the Respondent that there was insufficient depth of native undisturbed soil above the water table. The Board found that the excavation of tree roots and other vegetation qualified as soil disturbance as it altered natural soil structure. The Board agreed that on the Appellant's property a package treatment plant utilizing a tertiary treatment process is necessary to adequately safeguard public health. The Appellant's evidence that other properties on Hornby Island were given permits for the type of system he wished to install did not convince the Board of any unfairness. Each site must be evaluated on its own merits. The appeal was dismissed.

2000-HEA-019(a) Dean Ellis v. Environmental Health Officer

Decision Date: March 5, 2001

Panel: Alan Andison

This was a reconsideration of Appeal No. 2000-HEA-019, in which the Board dismissed Dean Ellis' appeal of an EHO's decision refusing to issue a sewage disposal permit. After the Board had issued its decision, Mr. Ellis informed the Board that he had not been provided with a copy of the EHO's final

written submission, and had thereby been deprived of an opportunity to respond to that submission. The Board re-opened the appeal to consider Mr. Ellis' response and ensure procedural fairness.

Mr. Ellis alleged that the EHO applied different standards to his permit application than to other applications for similar systems on nearby properties. The Board found that Mr. Ellis' rebuttal submission provided no new evidence to support the merits of his application and provided no basis to refute the Board's previous findings. They also provided no evidence that the EHO had failed to properly consider the relevant regulations and policies, nor any indication that Mr. Ellis' application was the subject of unfair or discriminatory treatment. Further, even if the EHO had improperly exercised his discretion in approving similar systems on other properties, which was not established, the Board held that two "wrongs" do not make a "right", and that it was not prepared to use its authority to approve an unsafe system. The appeal was dismissed.

2000-HEA-022 Murray Chantler v. Environmental Health Officer (William Gemmell, Permit Holder)
Decision Date: October 6, 2000
Panel: Alan Andison

Murray Chantler appealed a decision of the EHO to issue a permit for the construction of a conventional sewage disposal system to serve three two-bedroom mobile homes on a lot near Errington. Mr. Chantler was concerned that the permit application contained a misrepresentation with respect to the existence of a restrictive covenant. It was indicated on the permit application that there were no restrictive covenants on the lot, when in fact there was a building scheme registered on the title of the property that restricted the number of mobile homes on the property to one. Mr. Chantler sought an order rescinding the permit.

The Board found that the purpose of the *Sewage Disposal Regulation* is to ensure that the public health is protected, and that a permit is issued on the condition that all material facts disclosed in the application are true. The Board also found that the existence of a restrictive covenant on a property title is only relevant to the issuance of a sewage disposal permit if it somehow impacts upon the public health. The Board found that there was no evidence in this case to suggest that the approved sewage disposal system would not adequately protect the public health. The Board also noted that the building scheme had since been removed from the title to the property. The appeal was dismissed.

2000-HEA-032(a) Ian Cook v. Environmental Health Officer (Valley Contracting, Permit Holder)
Decision Date: November 2, 2000
Panel: Alan Andison

Mr. Cook filed an appeal against the decision of the EHO to issue a sewage disposal permit for a residential property located on Bowen Island. Mr. Cook previously resided on the property, and had numerous concerns regarding the property's water supply and sewage disposal system. The EHO applied to the Board to dismiss the appeal on the grounds that Mr. Cook had no standing because he was not a "person aggrieved" by the issuance of a permit as required by the *Health Act*.

The Board found that a person is aggrieved by the issuance of a sewage disposal permit if there is a possibility that the person's health could be negatively impacted, or if a health risk could be created on the person's property. Since Mr. Cook did not currently reside on or near the property, and since he did not own the property or any other properties in the area, the Board found that Mr. Cook did not meet the test for a person aggrieved. Accordingly, the Board found that Mr. Cook had no standing, and the application to dismiss the appeal was granted.

2000-HEA-033 Frank and Maureen Huber v. Environmental Health Officer (Margaret Cabral, Permit Holder)

Decision Date: November 28, 2000

Panel: Alan Andison

Frank and Maureen Huber appealed a decision of the EHO to issue a permit for an on-site sewage disposal system to serve a new four-bedroom home on a 10-acre lot in Surrey. The permitted system incorporated an existing mounded disposal field that served a previous home on the Property and, as such, the permit was issued as a "repair or alteration" under section 7(2) of the *Sewage Disposal Regulation*. The Hubers, who reside on an adjacent lot, were concerned that the sewage disposal system was improperly permitted as a "repair", as opposed to a new construction. The Hubers also claimed that the permitted system was not properly designed to protect the public health on the basis that: the effluent may not be sufficiently attenuated due to the presence of a high water table during the wet months; the type of drain rock used was inadequate; the disposal mound is located too close to the property line; and the drainfield trenches are spaced too close together. The Hubers sought an order rescinding the permit.

The Board found that the sewage disposal system could be permitted under the repair or alteration provision in section 7(2) or, alternatively, under the general permitting provision in section 3(3) of the *Regulation*. In either case, the Board noted that the primary issue was whether the EHO properly exercised her discretion in deciding that the sewage disposal system does not constitute a health hazard.

The Board was satisfied that the permitted system would not constitute a health hazard. In particular, the Board accepted that the water table would not rise to within 18 inches of the ground surface, and that the system's biofilter would significantly reduce the amount of waste that must be attenuated through the soil. The Board also found that there were adequate safeguards in place to prevent any contaminated water from reaching the Hubers' property. The Board noted that the Hubers had provided little evidence to support their assertions, in contrast to the substantial amount of evidence provided by the EHO to indicate that the proposed system would adequately protect the public health. Accordingly, the appeal was dismissed.

2000-HEA-034 Abdel M. Mousa v. Manager, Health Protection

Decision Date: March 12, 2001

Panel: Tracey Cook

This was an appeal by Abdel Mousa of a decision by the Health Protection Manager for the Simon Fraser Health Region refusing to issue a permit to install two temporary sewage holding tanks on a property in Burnaby. The Manager refused the permit on the ground that it did not provide for a long-term solution to the health hazard on the property. In 1988, the Health Region discovered that the existing sewage disposal system on the property had failed. Mr. Mousa then made several unsuccessful attempts to obtain a permit to repair the system (see Environmental Appeal Board Appeal No. 1999-HEA-004, October 14, 1999).

The Board found that there is nothing in the legislation preventing a permit from being issued for a temporary system, or suggesting that the requirements for a temporary system are different from those for more permanent solutions. Furthermore, such an interpretation is consistent with Ministry of Health policy. However, if a temporary system were to be permitted, the Appellant would have to amend his application to provide a specific time frame for the system's installation and duration of use.

The Board found that section 7(2) of the *Sewage Disposal Regulation* was not the appropriate section for considering whether to issue the permit, since the Appellant's application was not for the repair or alteration of the Appeliant's existing septic system.

The Board found that a permit should not be issued under section 3 of the *Sewage Disposal Regulation* because there was insufficient information and too many unknowns to find that the proposed system would not pose an unreasonable risk to public health. In particular, there was no credible estimate of weekly sewage flow, no endorsement by a professional engineer based on credible estimates, and there was a legitimate concern about irresponsible use of the storage tanks. The Board found, however, that a policy requirement for a municipal bylaw was not relevant in this case, given the temporary nature of the storage tanks. The appeal was dismissed.

2000-HEA-036(a), 2000-HEA-037(a), 2000-HEA-038(a) British Columbia Shellfish Growers Association et al. v. Environmental Health Officer (Point One Engineering, Permit Holder)
Decision Date: January 5, 2001
Panel: Alan Andison

The Appellants appealed a decision of the EHO to issue a sewage disposal permit. The EHO made two preliminary applications requesting that the Board deny the appeals summarily, or alternatively, hear the appeals by way of written submissions.

The EHO, as the applicant, had the onus of establishing why the appeals should be dismissed without a hearing on the merits. The EHO's submissions, which were not extensive, focused on the fact that the decision to issue a permit for the proposed development has been appealed on two previous occasions. While the Board generally will not re-hear matters on which it has already made a final decision, it noted that the EHO effectively conceded that there is a new question raised by these appeals: whether the building plans match the estimated daily sewage flow shown in the permit. In addition, the Appellants raised valid concerns regarding the safety of the permitted system and the adequacy of public notice of the permit. As such, the Board found that it had not been provided with sufficient reasons to justify dismissing the appeals summarily.

The Board found that several of the issues raised by the Appellants have been dealt with in previous appeals and that the relevant issues do not raise significant questions of credibility. While there are some new issues and the parties clearly dispute certain material facts relating to the interpretation of the building plans, the facts in dispute are not complex. Further, the issue of adequate posting of notice may be fairly addressed without the need for an oral hearing. For these reasons, the Board found that a written hearing will provide the parties with a meaningful opportunity to be fully and fairly heard.

The application to summarily dismiss the appeals was denied. The application to hear the appeals by way of written submissions was granted.

Pesticide Control Act

1999-PES-010(b), 1999-PES-011(b), 1999-PES-012(b) Grant McMahon, Kaslo and District Community Forest Society and Nelson Eco Centre v. Deputy Administrator, Pesticide Control Act (Ministry of Forests, Permit Holder)
Decision Date: April 28, 2000
Panel: Cindy Derkaz, Fred Henton, Jackie Hamilton

The Appellants appealed a decision of the Deputy Administrator to issue a pesticide use permit to the Ministry of Forests, authorizing the use of

Vision and Release on 24 cutblocks. The Appellants sought to have the permit cancelled on the grounds of inadequate consultation with the Sinixt Nation, issuing a false and misleading public notice in relation to the permit application and harm to the environment and human health. The Ministry requested a one-year extension of the permit.

There was evidence before the Board that the Sinixt Nation was not an Indian Band under the *Indian Act*. As there was no legal argument on the issue of whether there is a duty to consult with aboriginal peoples who are not a recognized Indian Band under that Act, the Board could not decide the consultation issue. On the public notification issue, the Board found that the notice did not contravene the regulatory requirements and that the Appellants had adequate advance notice of the application. The Board also found that the Appellants had not shown, on the balance of probabilities, that there would be an adverse effect on human health or the environment as a result of the permit. However, the Board directed the permit to be amended to include an inspection by an independent qualified professional who was not an employee of the Ministry. The Ministry was unable to satisfy the Board that an extension was necessary so its application was denied. The Board upheld the permit with some minor amendments. The appeal was dismissed.

1999-PES-019 Shuswap-Thompson Organic Producers Association v. Deputy Administrator, Pesticide Control Act (City of Kamloops, Permit Holder)

Decision Date: May 3, 2000

Panel: Katherine Hough, Tracey Cook, Barbara Thomson

This was an appeal by the Shuswap-Thompson Organic Producers Association of a decision of the Deputy Administrator to issue a pesticide use permit to the City of Kamloops. The permit authorizes the City to use Transline (chlopyralid), Banvel (dicamba), and Tordon 22K (picloram) to control noxious weeds within its municipal limits.

The Board found that the issue of whether the permit incorrectly authorized the use of Transline before it was formally registered for use in the Kamloops areas was moot because the City did not use Transline before it was registered. The Board found that although the City had used Banvel II in place of Banvel without authorization, there was no evidence that the two formulations have different effects. Therefore, although the use of Banvel II may have been a technical breach of the permit, the Board found that this did not warrant cancellation of the permit.

The Board found that the potential for adverse effects of the permitted pesticides on water supplies and non-target vegetation was sufficient to warrant a review of the permit. The Board found that with certain amendments to the permit, the pesticides would cause no unreasonable adverse impact on human health or the environment. The amendments ordered by the Board included prohibiting the application of Transline and Tordon 22K to any ditches, prohibiting the use of Tordon 22K on the floodplain of the Thompson River, requiring that soil assessments be done where Tordon 22K is to be applied, reducing the total quantity of Banvel II that may be used, reducing the maximum application rate and quantity of Tordon 22K, and limiting acceptable "spot treatment" application methods.

The Board also ordered that the permit be amended to include a condition that a map showing the date, type of pesticide treatment, and location of treatment be made available at a location accessible to the public within a reasonable period after pesticide application. The Board further

ordered that any area treated with Tordon 22K be closed to the public during application and remain closed until the spray has dried on the foliage. The appeal was allowed, in part. The request for costs was denied.

2000-PES-001 to 2000-PES-014 Maureen Fitzmaurice et al. v. Deputy Administrator, Pesticide Control Act (B.C. Ministry of Forests, Permit Holder)
Decision Date: April 14, 2000
Panel: Jane Luke, Cindy Derkaz, Fred Henton

These were appeals by several individuals and groups against a pesticide use permit issued to the Ministry of Forests by the Deputy Administrator. The permit authorized the use of Foray 48B, with the active ingredient Btk, in a spray program designed to eradicate a localised population of the North American gypsy moth in Burnaby, B.C. The Appellants sought an order cancelling, or varying the permit, or an order staying the permit pending the release of further studies.

The Board followed the two stage test set out in *Islands Protection Society v. British Columbia Environmental Appeal Board* (B.C.S.C., 1988) for determining whether a pesticide application will have an "unreasonable adverse effect." The test involved inquiring into whether an adverse effect exists, and, if found, undertaking a risk-benefit analysis to determine whether that adverse effect is reasonable.

Applying this test, the Board found there was insufficient evidence of site-specific potential health effects, but that there was evidence that the spray program would have permitted an adverse site-specific effect on the environment. Specifically, the Board found that the use of Foray 48B, as authorized by the permit, will kill non-target Lepidoptera that are in similar life stages as the gypsy moth at the time of spraying. However, in weighing this adverse effect against the benefit of the spray program, the prevention of economic harm from possible trade restrictions on some forestry and nursery products, the Board found that it was not unreasonable. Although the Deputy Administrator failed to consider the purpose of the spray program in making his decision, the Board exercised its *de novo* authority to review the evidence before it, and it considered the purpose of the spray program in its analysis. The appeals were dismissed.

2000-PES-016 Squamish-Lillooet Regional District v. Deputy Administrator, Pesticide Control Act (BC Rail Ltd., Permit Holder)
Decision Date: August 23, 2000
Panel: Jane Luke

The Squamish-Lillooet Regional District (the "SLRD") requested an interim stay of BC Rail's pesticide use permit no. 134-084-00/02, because BC Rail had commenced spraying despite the fact that SLRD had appealed the permit and requested that it be stayed. The Board granted an interim stay, effective until midnight on Tuesday, September 5, 2000.

2000-PES-016(a) Squamish-Lillooet Regional District v. Deputy Administrator, Pesticide Control Act (BC Rail Ltd., Permit Holder)
Decision Date: August 31, 2000
Panel: Alan Andison

This was an amendment to Appeal No. 2000-PES-016. The interim stay decision was amended to provide that it would remain in effect until the Board issued its decision on the merits of the stay.

2000-PES-016(b) Squamish-Lillooet Regional District v. Deputy Administrator, Pesticide Control Act (BC Rail Ltd., Permit Holder)
Decision Date: September 14, 2000
Panel: Alan Andison

This was an application by the Squamish-Lillooet Regional District ("SLRD") for a stay of a pesticide use permit issued to BC Rail by the Deputy Administrator. The pesticide use permit authorizes the application of certain herbicides to the ballast sections of BC Rail's mainline and sidings between mile 100 (north of Pemberton) and mile 131 (north of D'Arcy).

The Board applied the three-part test for a stay application as set out in the decision of the Supreme Court of Canada in *RJR-Macdonald* v. *Canada*. The Board found that there was a serious issue to be tried, however, SLRD had not adequately established that they would suffer irreparable harm if the stay were not granted. The Board further determined that SLRD had not established that the potential for harm to human health and the environment, if a stay was refused, outweighed the potential harm arising from unsafe operation of the railway, if a stay was granted. The application for a stay was refused.

2000-PES-017, 2000-PES-018, 2000-PES-019, 2000-PES-020 Resort Municipality of Whistler, Corporation of the District of North Vancouver, Squamish-Lillooet Regional District, C-Dar World Forest Foundation v. Deputy Administrator, Pesticide Control Act (BC Rail Ltd., Permit Holder)
Decision Date: August 25, 2000
Panel: Cindy Derkaz

The Resort Municipality of Whistler requested an interim stay of BC Rail's pesticide use permit no. 134-123-00/02 pending a decision on the merits of an appeal. The Board found that there was no evidence before the Board that a short interim stay pending a decision would unduly prejudice BC Rail. The Board granted an interim stay, effective until midnight on Friday, September 8, 2000.

2000-PES-017(a), 2000-PES-018(a), 2000-PES-019(a), 2000-PES-020(a) Resort Municipality of Whistler, Corporation of the District of North Vancouver, Squamish-Lillooet Regional District, C-Dar World Forest Foundation v. Deputy Administrator, Pesticide Control Act (BC Rail Ltd., Permit Holder)
Decision Date: August 31, 2000
Panel: Alan Andison

This was an amendment to a stay decision (Appeal No. 2000-PES-017, 2000-PES-018, 2000-PES-019, 2000-PES-020). The interim stay decision was amended to provide that it would remain in effect until the Board issued its decision on the merits of the stay.

2000-PES-017(b), 2000-PES-018(b), 2000-PES-019(b), 2000-PES-020(b) Resort Municipality of Whistler, Corporation of the District of North Vancouver, Squamish-Lillooet Regional District, C-Dar World Forest Foundation v. Deputy Administrator, Pesticide Control Act (BC Rail Ltd., Permit Holder)
Decision Date: September 14, 2000
Panel: Alan Andison

This was an application by the Resort Municipality of Whistler ("Whistler") and the Squamish-Lillooet Regional District ("SLRD") for a stay of a pesticide use permit issued to BC Rail by the Deputy Administrator. The pesticide use permit authorizes the application of certain herbicides to the BC Rail right-of-way between mile 0 (North Vancouver) and mile 100 (north of Pemberton). The permit contains a number of conditions, including public notification, pesticide-free zones and reporting requirements. Whistler and SLRD

opposed the permit primarily on the grounds that the spraying will have potential harmful effects on water supplies and the natural environment within their respective municipal boundaries.

The Board applied the three-part test for a stay application as set out in the decision of the Supreme Court of Canada in *RJR-Macdonald* v. *Canada*. The Board found that both Whistler and SLRD had established that there was a serious issue to be tried. The Board determined that SLRD had not adequately established that it would suffer irreparable harm, and its application was dismissed accordingly. However, the Board found that Whistler would suffer irreparable harm if a stay was not granted, primarily due to the proximity of Whistler's water sources to the BC Rail right-of-way. The Board further determined that the balance of convenience favoured the granting of a stay. The potential harm to Whistler's water supply if a stay was refused outweighed the potential harm caused by vegetation along the right-of-way. BC Rail had not adequately shown that dangers due to vegetation on its right-of-way were imminent.

SLRD's application for a stay was refused. Whistler's application for a stay within its municipal boundaries was granted.

2000-PES-025(a) through 00-PES-053(a)
Northwest BC Coalition for Alternatives to Pesticides et al. v. Deputy Administrator, Pesticide Control Act (Canadian Forest Products Ltd., Permit Holder)
Decision Date: January 25, 2001
Panel: Alan Andison

The Office of the Wet'suwet'en (the "Applicant"), one of seven Appellants, made a preliminary application to postpone the hearing of appeals against a pest management plan and various approvals issued by the Deputy Administrator to Canadian Forest Products Ltd. ("Canfor").

The Applicant argued that an adjournment was required to allow the Applicant and Canfor time to meet in an attempt to narrow the issues and shorten the appeal hearing process. Canfor supported, and the Deputy Administrator did not object to, an adjournment. Four of the remaining Appellants objected to the application.

The Board found that the Applicant failed to show that a postponement of the hearing was justified in the circumstances. While no previous postponement had been granted, the Board found that a postponement would unfairly prejudice the other Appellants. The Board noted the application was received only three business days before the hearing was scheduled to commence, and only after the Board had been notified by Canfor of the pending application and inquired into the matter. Further, all of the appeals were to be heard together to reduce the duplication of evidence and the cost of holding multiple hearings. Scheduling a hearing involving nine parties was a difficult task and most, if not all, of the parties made many sacrifices to be available on the scheduled dates. To secure new hearing dates, prior to the upcoming spray season, that would accommodate the schedules of all of the parties and their respective witnesses and experts, appeared unlikely. Further, the hearing would not be significantly shortened if the Applicant narrowed its issues, and the order of presentations by Appellants could be altered to allow more time for the Applicant and Canfor to meet and discuss options. The application was denied.

Waste Management Act

1999-WAS-041(c) Canadian Occidental Petroleum Ltd. v. Director of Waste Management (BC Rail Ltd., BCR Properties Ltd., British Columbia Railway Company, District of Squamish, FMC Chemicals Ltd., FMC Corporation, FMC of Canada Limited – FMC Canada Limitee, and Mid-Atlantic Investments Ltd., International Forest Products Ltd., Squamish Nation, Third Parties)
Decision Date: March 20, 2001
Panel: Katherine Hough, Dr. Robert Cameron, Marilyn Kansky

This was an appeal of the decision by the Director of Waste Management to issue a remediation order with respect to mercury contamination at the site of a former chlor-alkali plant and certain off-site lands and water bodies (the "Site"). Canadian Occidental Petroleum Ltd. ("COPL") sought an order that Mid-Atlantic Investments Ltd. ("MAI") be added to the order as a person responsible for remediation. There was no dispute that MAI is a person responsible for remediation by virtue of having owned and operated the plant for over 20 years.

COPL argued that the Director must name in the order all persons who contributed most substantially to the Site becoming contaminated, including MAI. The Board found that the Director was not required under the *Waste Management Act* to name all substantial contributors in the remediation order. The Board found that the Director must, to the extent feasible without jeopardizing remediation requirements, name at least one person who contributed most substantially to the Site becoming contaminated, having taken into account the factors listed in section 27.1(4)(b), and any private agreements of the type specified in section 27.1(4)(a) which are known to the Director.

COPL also argued that the Director erred by deciding not to name MAI on the basis of certain private agreements. The Board found that these private agreements either failed to provide sufficient grounds for not naming MAI in the order, or were not the type of agreement that must be taken into account by the Director under section 27.1(4) in deciding which persons to name in the order.

The Board found that MAI should be added to the order as a person responsible for remediation because most of the mercury discharges from the plant occurred while MAI operated the plant, and there was no suggestion that adding MAI to the order would jeopardize remediation efforts. The appeal was allowed.

2000-WAS-003 Delta Shake & Shingle (1989) Ltd. and 429155 British Columbia Ltd. v. Assistant Regional Waste Manager
Decision Date: June 21, 2000
Panel: Toby Vigod

This was an appeal by Delta Shake & Shingle (1989) Ltd. and 429155 British Columbia Ltd. of a decision of the Assistant Regional Waste Manager to issue a pollution prevention order. The order required the Appellants to undertake certain actions and prepare a remediation plan by specified dates following a fire that took place at the landfill owned by Delta Shake & Shingle.

The Appellants failed to appear at the hearing at the time and place stated in the Notice of Hearing. The appeal was considered abandoned and was accordingly dismissed.

2000-WAS-003(a) Delta Shake & Shingle (1989) Ltd. and 429155 British Columbia Ltd. v. Assistant Regional Waste Manager
Decision Date: July 11, 2000
Panel: Toby Vigod

This was an application by the Assistant

Regional Waste Manager for his costs in relation to the appeal by Delta Shake & Shingle (1989) Ltd. and 429155 British Columbia Ltd., on the grounds that the Appellants failed to attend the appeal hearing. The Assistant Manager asked the Board to award him special costs or, alternatively, costs on a party-and-party basis at Scale 3 of the Rules of the B.C. Supreme Court. He also asked that the Appellants be made jointly and severally liable for his costs.

The Board found that the failure of the Appellants to attend the hearing after being properly served with a Notice of Hearing, and after advising the Board office that they would be in attendance, warranted an award of costs against them. The Board also found that the Appellants' conduct warranted an award of special costs in the sum of $2,109.75, and that the Appellants were jointly and severally liable for these costs. Due solely to the fact that the Board did not specifically request submissions on whether it should recover its expenses, the Board declined to order the Appellants to pay the Board's expenses. The application for costs was allowed.

2000-WAS-004 Tom Mesi v. Regional Waste Manager (Little Valley Forest Products (1993) Ltd., Third Party)
Decision Date: December 11, 2000
Panel: Katherine Hough, Richard Cannings, Phillip Wong

Tom Mesi appealed a decision of the Regional Waste Manager to issue an amended permit to Little Valley Forest Products (1993) Ltd. ("LVFP"). LVFP operates a sawmill in Hagensborg, and the amended permit authorizes air emissions from a beehive burner used to incinerate wood waste. Mr. Mesi, who owns property adjacent to the sawmill, claimed that the emissions were injurious to his health, and that the dustfall was creating a nuisance, interfering with his ability to sell his herb crop, and adversely affecting the aquatic life in a millpond located on LVFP's property.

The Board found that there was insufficient evidence to establish that the dustfall and oil residue from the sawmill operation was either adversely affecting the aquatic life in the millpond, or creating a health hazard. The Board also found that, although the amended permit specified a reduction in the previously permitted smoke opacity levels, there was an unanticipated increase in the amount of dustfall. The Board determined that the increased dustfall was adversely affecting Mr. Mesi's ability to earn an income from his farm. As such, the Board upheld the amended permit, but ordered that conditions be added to reduce the amount of dustfall (through modifications to the burning process), and to provide for improved dustfall monitoring. The appeal was allowed, in part.

2000-WAS-005(a), 2000-WAS-006(a) R.T. Newton, Maurice Bailey, Porrah Development Ltd., Harrop Environmental Services Inc. v. Regional Waste Manager (Pacific Regeneration Technologies Inc., Third Party)
Decision Date: April 28, 2000
Panel: Toby Vigod

The Appellants applied for a stay of a waste permit issued by the Regional Waste Manager to Pacific Regeneration Technologies Inc. ("PRT"), authorizing the discharge of effluent from a spray irrigation system onto a hybrid poplar plantation near Harrop, B.C.

The Board found that the Appellants had raised serious issues of procedural fairness in their appeals. However, the Board found that the Appellants had not made a *prima facie* case that they, or the environment, would suffer irreparable harm if the permit was not stayed. Furthermore, the Board found that the balance of convenience did not weigh in favour of a stay of the permit. The

application for a stay was denied.

2000-WAS-006(b) Maurice Bailey, Porrah Development Ltd. and Harrop Environmental Services v. Regional Waste Manager (Pacific Regeneration Technologies Inc., Third Party)
Decision Date: January 12, 2001
Panel: Cindy Derkaz, Dr. Robert Cameron, Barbara Thomson

The Appellants appealed a waste permit issued by the Regional Waste Manager to Pacific Regeneration Technologies Inc. ("PRT") authorizing the discharge of effluent from a tree seedling nursery, using a spray irrigation system, to irrigate a hybrid poplar plantation. The permit also authorized emergency overflow from a collection pond to be discharged into an "unnamed creek." The Appellants sought to have the permit revoked or amended.

The Appellants argued that the published notice of the permit application was for a substantially different waste disposal system than that which was authorized by the permit and, therefore, the notice was a nullity. The Board found that, while the initial posting and eventual permit were quite different, the Appellants were not prejudiced by the differences. Further, the appeal was conducted as a hearing *de novo* and the Appellants had the opportunity to fully present their case to the Board.

The Appellants argued that the permit caused or contributed to flooding on lands of Porrah Development Ltd. The Board found that the overflow from the collection pond did not flow into an unnamed creek, and was not the sole cause of flooding, but may contribute to seasonal flooding because it flowed into a trench on Porrah Development Ltd.'s land. The Board found that PRT should be required to design a system to ensure that effluent is not discharged off its property.

The Appellants also argued that the works authorized by the permit would cause contamination of the groundwater. The Board found that the Appellants did not show, on the balance of probabilities, that the permit created an unacceptable risk to human health or the environment. However, the Board found that the permit should be modified with respect to the provisions for monitoring, reporting and discharge.

The Board referred the permit back to the Regional Waste Manager with directions. The Appellants' request for costs was denied.

2000-WAS-008(a) The Straw Farm Limited v. Assistant Regional Waste Manager (City of Abbotsford, East Abbotsford Compost Association, Farmers' Fresh Mushrooms Inc., Ross Land Mushrooms Ltd., Third Parties)
Decision Date: April 20, 2000
Panel: Toby Vigod

This was a stay application in an appeal of a decision of the Assistant Regional Waste Manager to issue a pollution abatement order to The Straw Farm Limited (the "Applicant") to deal with air contaminants (odours) being released from its mushroom composting operation located in Abbotsford, B.C. The Applicant appealed the decision and applied for a stay of the order.

The Board found that serious issues were raised by the appeal, and that the Applicant would suffer irreparable harm if the stay were not granted, including financial harm and potential loss of market share and clients. The Board also found that the balance of convenience favoured the granting of a stay. The Board ordered a stay of the order pending a decision on the merits of appeal, with the condition that the Applicant take prescribed measures to limit odours released from its composting operation.

2000-WAS-008(b) The Straw Farm Limited v. Assistant Regional Waste Manager (City of Abbotsford, East Abbotsford Compost Association, Farmers' Fresh Mushrooms Inc., Ross Land Mushrooms Ltd., Third Parties)
Decision Date: August 25, 2000
Panel: Marilyn Kansky, Fred Henton, Phillip Wong

This was a reconsideration of the Board's decision to issue a stay in Appeal No. 2000-WAS-008(a). The Assistant Regional Waste Manager applied to have the stay reconsidered because the appeal hearing was rescheduled from June to September. The basis of the application was that the worst impact of the odours on neighbouring residents allegedly occurs during the spring and summer months.

The Board found that the balance of convenience favoured leaving the stay in place. However, in considering that the air contaminants were worse during the summer, and that previous corrective measures had been ineffective, the Board added a number of conditions to the stay that were designed to reduce the odours. The Board upheld its previous stay decision, with further conditions.

2000-WAS-008(c) The Straw Farm Limited v. Assistant Regional Waste Manager (City of Abbotsford, East Abbotsford Compost Association, Farmers' Fresh Mushrooms Inc., Ross Land Mushrooms Ltd., Third Parties)
Decision Date: September 29, 2000
Panel: Alan Andison

By consent of the parties, the Board ordered that a stay of a pollution abatement order (see Appeal No. 2000-WAS-008(b)) be vacated, and that the appeal be tentatively adjourned until September 2001.

2000-WAS-012, 2000-WAS-013, 2000-WAS-014 Beazer East Inc., Atlantic Industries Ltd., Canadian National Railway v. Assistant Regional Waste Manager
Decision Date: October 12, 2000
Panel: Alan Andison

The Regional Waste Manager made a number of applications to the Board relating to the evidence to be presented in a hearing in which the Appellants sought to stay the operation of an amended remediation order issued by the Assistant Regional Waste Manager. The Manager applied for a summons *duces tecum* to compel the production of an "independent review" of one of the Appellants' expert reports. The Manager also applied to exclude the Appellants' expert reports from consideration in the stay application. In the alternative, the Manager applied to convert the format of the stay hearing from written submissions to oral submissions.

In considering the admissibility of the Appellants' expert reports, the Board reviewed the evidentiary requirements of the test for a stay, as outlined by the Supreme Court of Canada in *RJR-Macdonald* v. *Canada*. The Board found that expert evidence may be admitted where it is relevant to establish the impact of complying with the amended order on the Appellants, and to establish whether the harm to one party if the stay is granted is outweighed by the harm to the other if the stay is refused.

The Board found that the need for an oral hearing and cross-examination depends on a number of contextual factors. The Board found that this case concerns an interlocutory application and, as such, is not a final disposition of the matter. Furthermore, the Board usually conducts such applications in writing, and all the parties in this case have had adequate opportunity to make their case and respond to the other side under the current written format.

In these circumstances, the Board found that a written hearing is appropriate.

Finally, the Board found that the dominant purpose of the document requested in the application for a summons *duces tecum* was to assist the Appellants in the conduct of litigation and, as such, was subject to a litigation privilege. The Board found that the Appellants had not waived the privilege, and accordingly, the Board denied the application.

The application to exclude expert reports was granted in part. The applications for a summons *duces tecum* and to convert the stay hearing to an oral format were denied.

2000-WAS-018 British Columbia Railway Company, BC Rail Ltd., and BCR Properties Ltd. v. Director of Waste Management (Canadian Occidental Petroleum Ltd., District of Squamish, FMC Chemicals Ltd., FMC Corporation, FMC of Canada Ltd., and Squamish Nation, Third Parties)
Decision Date: October 31, 2000
Panel: Alan Andison

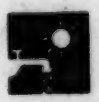
The Appellants ("BCR Group") applied for an oral hearing of a stay application, in order to allow BCR Group to cross-examine employees of Canadian Occidental Petroleum Ltd. ("COPL") on an issue concerning COPL's corporate policy.

The Board found that the evidence BCR Group was seeking to adduce through cross-examination was not of sufficient relevance in determining whether to issue a stay, and, therefore, an oral hearing was not warranted. The application was dismissed.

2000-WAS-018(a) British Columbia Railway Company, BC Rail Ltd., and BCR Properties Ltd. v. Director of Waste Management (Canadian Occidental Petroleum Ltd., District of Squamish, FMC Chemicals Ltd., FMC Corporation, FMC of Canada Ltd., and Squamish Nation, Third Parties)
Decision Date: November 22, 2000
Panel: Alan Andison

The Appellants ("BCR Group") appealed the decision of the Director to amend a remediation order to include BCR Group, along with Canadian Occidental Petroleum Ltd. ("COPL"), for the remediation of the site of a former chlor-alkali plant in Squamish. In this application, BCR Group requested a stay of provisions in the remediation order requiring BCR Group to undertake remedial measures and post financial security.

By consent of the parties, BCR Group was granted a stay of the provision requiring it to post financial security. However, a stay of the other provisions was denied. The application was allowed, in part.



Water Act

1992-WAT-029 Peterson Creek Water Users' Community v. Deputy Comptroller of Water Rights (Chinook Cove Ranches Ltd., Third Party)
Decision Date: November 17, 2000
Panel: Cindy Derkaz

This was an appeal by the Peterson Creek Water Users' Community ("PCWUC") of the decision of the Deputy Comptroller of Water Rights to allow an appeal by Chinook Cove Ranches Ltd. ("Chinook") against an assessment levied by PCWUC. The Deputy Comptroller held that the

assessment prepared by PCWUC against Chinook was invalid, as it did not meet the requirements of section 57 of the *Water Act* (as it was in 1992 when the decision was made). The PCWUC sought an order reversing the Deputy Comptroller's decision, and confirming the assessment.

The Board found that the Deputy Comptroller was correct in determining that the assessment was invalid. In particular, the Board found that the assessment did not state the amount of money estimated to be required by the water users' community, the sum assessed against each member proportionate to the member's interest in the PCWUC, or the place of payment of the assessment, as required by section 57 of the *Water Act*. The appeal was dismissed.

1998-WAT-031 Porters Dairy Ltd. v. Assistant Regional Water Manager
Decision Date: June 21, 2000
Panel: Toby Vigod

Porters Dairy Ltd. filed an appeal against a decision of the Assistant Regional Water Manager refusing to grant the Appellant a licence to divert and use water from Porter Creek. With the consent of the parties, the Board rescinded the Assistant Regional Water Manager's decision and ordered that a water licence be issued subject to certain terms and conditions.

1999-WAT-019, 1999-WAT-020 Beaver Meadow Farms (1971) Ltd. v. Regional Water Manager
Decision Date: October 2, 2000
Panel: Alan Andison

Beaver Meadow Farms (1971) Ltd. appealed two decisions of the Regional Water Manager: (1) the refusal of a water licence for land improvement purposes, and (2) the operation of certain clauses in a conditional water licence requiring the recording and submission of water flow measurements to a fish hatchery.

By consent of the parties, the Board made the following orders: the appeals are abandoned, approval is granted to make changes in and about a stream under section 9 of the *Water Act*, and the disputed clauses in the conditional water licence are rescinded.

1999-WAT-029, 1999-WAT-030 Cliff and Lois Hinsche and Clint Thompson v. Assistant Regional Water Manager (Iris Wright, Third Party)
Decision Date: August 14, 2000
Panel: Carol Quin, Helmut Klughammer, Ken Maddox

Cliff and Lois Hinsche and Clint Thompson filed appeals against a decision of the Assistant Regional Water Manager to amend a final water licence, held by Iris Wright, by replacing it with conditional water licences. The new licences allow Ms. Wright to use water from Knife Creek and Clearspring Creek for irrigation purposes on appurtenant land. The Appellants sought an order reversing the Assistant Regional Water Manager's decision. They requested that the new licences be cancelled, and the final water licence be reinstated.

The Board was satisfied that the Appellants were aware that the final water licence was under review, and had adequate opportunities to raise objections to the proposed amendments. The Board found that if the water was diverted and used according to the terms and conditions of the new licences, there should be no adverse affect on the downstream licensees. The Board was satisfied that the requirements of the new licences should ensure that no more water than that authorized by the licences would be diverted and used. The Board was also satisfied that there would be adequate monitoring and enforcement of the licenses by the Water Branch to protect the rights of downstream licensees. The appeals were dismissed.

1999-WAT-031(b) Earl Devlin v. Engineer under the Water Act (Duncan Devlin, Third Party)
Decision Date: June 12, 2000
Panel: Cindy Derkaz

This was an appeal of an order by the Engineer requiring Earl Devlin to drain impounded water and to remove two earthen dams located in an unrecorded stream on his property. The order was issued because Mr. Devlin had not obtained a licence prior to constructing the works, and the Engineer believed that the works were of inferior construction and could be subject to failure. Mr. Devlin asked that the order be cancelled on the grounds that the works were safe and the water would be used for fire prevention purposes (domestic use). He also argued that the Board should not consider evidence obtained by Water Branch employees because their entry onto his property and their taking of photographs constituted an unreasonable search and seizure, contrary to section 8 of the *Charter of Rights and Freedoms*.

The Board found that the Water Branch officials had statutory authority to enter onto his lands, and that the act of inspecting lands for administrative or regulatory purposes did not constitute a search within the meaning of the *Charter*. Likewise, the taking of photographs did not constitute a search or a seizure. The Board also found that, while it is not an offence to divert unrecorded water for domestic purposes, it does not create any right to use the water or to construct works, and does not authorize the permanent storage of water. Therefore, Mr. Devlin's works were unauthorized. The Board accepted the Engineer's evidence that the works were not safe and upheld the order. The appeal was dismissed.

1999-WAT-032(b), 1999-WAT-036(b) Shirley M. Daigle and Judith and David Oliver v. Assistant Regional Water Manager
Decision Date: February 27, 2001
Panel: Carol Quin, Katherine Hough, Helmut Klughammer

Two appeals were filed against the decision of the Assistant Regional Water Manager to order Shirley Daigle to restore the natural flow of water on her property by excavating an adequate channel. The stated reasons for issuing the order included that Mrs. Daigle had, by filling in a "stream channel", caused flooding on adjacent land owned by the Olivers. The Olivers alleged that, by culverting a ditch that ran through her property, Mrs. Daigle had obstructed the flow of water from their property. Mrs. Daigle sought an order reversing the Assistant Regional Water Manager's decision, while the Olivers sought an order varying the decision on the ground that it did not go far enough to alleviate flooding on their property.

The Board found that there had always been a natural flow of water through the two properties that met the definition of a "stream" under the *Water Act*. The re-routing or altering of the natural stream through ditching without a water licence did not change the finding that there was, in law, a natural watercourse. The Assistant Regional Water Manager therefore had authority under the *Water Act* to order the restoration or remediation of any changes in and about the stream.

The Board found that, by constructing the bucket culvert and associated works, Mrs. Daigle made changes in and about the stream. These changes contributed to the flooding of the Olivers' meadow. As such, the Board found that the Assistant Regional Water Manager properly exercised his authority in ordering Mrs. Daigle to remediate the stream. The Board found, however,

that it would be unjust to order Mrs. Daigle to construct a ditch providing superior drainage than had existed prior to the installation of the bucket culvert. The Board altered the Assistant Regional Water Manager's decision to reflect the Board's findings and to resolve other ambiguities. The appeals were dismissed.

1999-WAT-033, 1999-WAT-034, 1999-WAT-035 Halcyon Hot Springs Ltd. and Halcyon Hot Springs Limited Partnership, Kenmar Enterprises Ltd. and Homis Logging Ltd. v. Regional Water Manager, Kootenay Region (Halcyon Health Spa Ltd. and Earnest A. Harding, Third Parties)
Decision Date: December 12, 2000
Panel: Alan Andison

Halcyon Hot Springs Ltd., Halcyon Hot Springs Limited Partnership, Kenmar Enterprises Ltd., and Homis Logging Ltd. appealed an order by the Regional Water Manager, cancelling a final water licence held by Halcyon Hot Springs Ltd. The parties requested that the Board issue a consent order reflecting the terms of an agreement reached by the parties. Accordingly, the Board reinstated the remaining rights under the final water licence, which is 70,000 gallons per day. The appeal was allowed, by consent.

1999-WAT-047(a) Lantzville Improvement District v. Assistant Regional Water Manager
Decision Date: May 23, 2000
Panel: Toby Vigod

This was an appeal of the decision of the Assistant Regional Water Manager refusing to issue a water licence on Bonell Creek to the Lantzville Improvement District ("Lantzville") due to a lack of information in support of its water licence application, which was filed in 1988 and held in abeyance until 1999. Lantzville sought an order rescinding the decision of the Assistant Regional Water Manager and directing him to outline the specific information required to consider Lantzville's application, and provide a reasonable time within which this information should be provided to the Water Branch.

The Board acknowledged that, during the eleven and a half years when the application was held in abeyance, the Water Branch did not ask for additional information from Lantzville, and it allowed this length of time to pass without advising Lantzville that this situation was no longer satisfactory. In the unique circumstances of the case, the Board found that in failing to advise Lantzville of the additional information required and failing to provide an opportunity to respond before making his decision, the Assistant Regional Water Manager did not act reasonably in refusing the application on the basis of lack of information. The appeal was allowed.

2000-WAT-003 Selkirk Land and Cattle Corporation v. Assistant Regional Water Manager (Raymond Lenzi, Third Party)
Decision Date: October 31, 2000
Panel: Cindy Derkaz

Selkirk Land and Cattle Corporation ("Selkirk") appealed the decision of the Assistant Regional Water Manager to issue a conditional water licence to Raymond Lenzi. The licence allows Mr. Lenzi to divert water for domestic purposes from Hays Creek, in Revelstoke. Mr. Lenzi's waterline currently runs through Selkirk's property, and Selkirk was concerned that the licence would interfere with its development plans. Selkirk sought an order revoking the licence on the basis that the Assistant Regional Water Manager violated the principles of procedural fairness by failing to adequately consult Selkirk before issuing the licence.

The Board found that there was no violation of procedural fairness in issuing the licence. Selkirk, as a licensee and a riparian owner,

was given notice and an opportunity to respond to the licence application. Selkirk's response contained allegations concerning Mr. Lenzi's reasons for for the licence, but did not contain any supporting documentation or evidence concerning the effect of the licence on Selkirk's development plans. The Assistant Regional Water Manager determined that Selkirk's objections were based on property rights rather than water rights under the *Water Act* and, as such, were outside the Assistant Regional Water Manager's jurisdiction. The Board found that the licence was properly issued, and that the Assistant Regional Water Manager was correct in concluding that Selkirk's objections did not warrant a hearing. Accordingly, the appeal was dismissed.

2000-WAT-008 Aaron Perry v. Assistant Regional Water Manager (Sue Milligan, Rob Harris, Sy and Jan Ornstein, Third Parties)
Decision Date: December 5, 2000
Panel: Alan Andison

Aaron Perry appealed a decision of the Assistant Regional Water Manager to issue a conditional water licence and to order the removal of an earth fill dam on Fontanne Brook.

By consent of the parties, the Board made the following orders: that the decision of the Assistant Regional Water Manager be rescinded; that a new water licence be issued to Mr. Perry, authorizing him to divert 500 gallons of water per day from Fontanne Brook for domestic purposes, and specifying the location and the construction method of the diversion point; that the earth fill dam be removed; and that a new permit be issued to Mr. Perry authorizing the occupation of Crown land.

2000-WAT-010 Shuswap Lakes Vacations Inc. v. Engineer under the Water Act
Decision Date: July 10, 2000
Panel: Toby Vigod

Shuswap Lakes Vacations Inc. appealed certain conditions in an approval it had been granted by an Engineer under the Water Act. The approval allowed the Appellant to construct or replace retaining walls where the Appellant's property meets the foreshore of Sicamous Narrows, subject to certain conditions. Some of the conditions were imposed to minimize or mitigate harm to salmon habitat along the foreshore as a result of consultation with the federal Department of Fisheries and Oceans ("DFO") and in accordance with the Sicamous Narrows Management Plan. The Appellant asked the Board to remove or vary a number of those conditions on the grounds that the Engineer exceeded his jurisdiction, unlawfully subdelegated his jurisdiction to DFO, fettered his discretion and erred in imposing two of the conditions.

The Board found that the Engineer did not err in any of the ways alleged by the Appellant. The Board further found the conditions in the approval to be reasonable and appropriate. The appeal was dismissed.

Wildlife Act

1999-WIL-009 Rajwant Rai v. Deputy Director of Wildlife
Decision Date: December 11, 2000
Panel: Jane Luke

This was an appeal by Rajwant Rai of a decision of the Deputy Director of Wildlife to cancel Mr. Rai's hunting licence for a period of 16½ months and to require Mr. Rai to successfully complete the Conservation and Outdoor Recreation Education ("CORE") program before his hunting privileges would be reinstated.

The Deputy Director's decision was based on Mr. Rai having pled guilty to one of four charges under the *Wildlife Act* (the Crown stayed the other three charges) in relation to an incident where Mr. Rai had shot two ewe mountain sheep when he was only authorized to shoot one. The Deputy Director had originally decided to cancel Mr. Rai's hunting licence for 18 months, but the Deputy Director declared the decision to be a nullity after discovering that it was erroneously based on Mr. Rai having been convicted on all four charges. After reconsidering the matter, the Deputy Director issued a new decision, which was the subject of this appeal. Mr. Rai claimed that the Deputy Director had no authority to declare his original decision a nullity, and that the cancellation of his hunting licence was unreasonable because a condition of his plea bargain with the Crown specified that no action would be taken against his hunting privileges. Mr. Rai sought an order rescinding the decision of the Deputy Director, and applied for an award of costs.

The Board found that Crown Counsel had no legal authority to guarantee that Mr. Rai's hunting licence would not be cancelled and, as such, the Deputy Director's decision was not affected by the plea bargain. The Board also found that the Deputy Director had no authority to declare his previous decision to be a nullity and issue a new decision, because the Deputy Director's error was not procedural in nature, and the doctrine of *functus officio* prevents the Deputy Director from revisiting a decision after it has been issued. The Board was also of the view that the period of ineligibility already served by Mr. Rai was not unreasonable in the circumstances. The appeal was allowed, and Mr. Rai's application for costs was denied.

1999-WIL-012 Bruce Parker v. Regional Manager
Decision Date: May 30, 2000
Panel: Marilyn Kansky

Bruce Parker appealed the Regional Manager's decision to allocate Mr. Parker a quota of six bull moose for the 1999/2000 year, and five bull moose for the years 2001-2003. Mr. Parker, a guide outfitter in the Cariboo Region, argued that the bull moose population in his area could support a quota of six bull moose per year, and that he needed this quota to make his business viable.

The Board upheld the five bull moose per year quota. It found that maintaining moose management objectives is an integral part of guide outfitter regulation under the *Wildlife Act*, and accepted evidence that, to meet moose management objectives, there was a need to reduce the level of bull moose harvest in Mr. Parker's guide territory. However, there was also evidence that factors upon which the quota allocation was based may change in the future (removal of road access). The Board recommended that, if this change occurs, the Regional Manager should reconsider Mr. Parker's quota. The appeal was dismissed.

1999-WIL-023 Karen McLean v. Regional Wildlife Manager
Decision Date: April 13, 2000
Panel: Carol Quin

Karen McLean appealed a decision of the Regional Wildlife Manager with respect to Ms. McLean's Angling Guide Operating Plans and Angling Guide Licences for 1999/2000. Ms. McLean requested that her quota of guided angler days be increased from 350 days to 960 days, and that certain conditions in her Angling Guide Licences be removed. Ms. McLean also alleged bad faith on the part of the Regional Wildlife Manager.

The Board found that the Regional Wildlife Manager was correct in refusing Ms. McLean's request for an angler day quota of 960 days. The Board found that the Regional Wildlife Manager had no authority to grant 960 angler days to Ms. McLean, as this would exceed the maximum prescribed by regulation. In addition, the Board found that there was insufficient evidence to conclude that the allocation of angler days to Ms. McLean, based on historical use, was not fair and reasonable.

The Board found that the Regional Wildlife Manager can require that a seasonal distribution of angler days be part of an angling guide's operating plan and licence for classified water, and that it was reasonable to do so for Ms. McLean's operating plan and licence. For unclassified waters, however, the Board found that there was no legislative authority requiring the number of angler days to be an enforceable part of the licence. The Board therefore ordered that that condition be removed from Ms. McLean's licence. The Board also found that the Regional Wildlife Manager did not exhibit bad faith towards Ms. McLean. The appeal was dismissed, with the exception of the removal of the angler days quota for unclassified waters from Ms. McLean's licence.

1999-WIL-031 Kevin Saunier v. Deputy Director of Wildlife

Decision Date: April 19, 2000

Panel: Toby Vigod

Kevin Saunier appealed the decision of the Deputy Director of Wildlife to cancel Mr. Saunier's hunting licence for three years and almost four months after being convicted of hunting on cultivated land without the consent of the owner. Mr. Saunier was also required to successfully complete the CORE program before his hunting licence privileges could be reinstated. Mr. Saunier argued that the length of the cancellation was excessive and that he should not have to complete the CORE program as his hunting companion had told him that they had permission to hunt on the land.

The Board held that, as the hunter, Mr. Saunier had the ultimate responsibility for ensuring that he did not hunt on cultivated land without the consent of the owner. However, given that Mr. Saunier's hunting companion said they had permission to hunt, had "guided" Mr. Saunier to the property and had only received a nine month cancellation, the Board found that Mr. Saunier's cancellation was excessive and reduced it by two years. However, the Board upheld the requirement that Mr. Saunier update his knowledge by completing the CORE program. The appeal was allowed, in part.

1999-WIL-032 Phillippe Cadorette v. Deputy Director of Wildlife

Decision Date: April 11, 2000

Panel: Toby Vigod

Phillippe Cadorette appealed a decision of the Deputy Director of Wildlife on the ground that the penalty imposed was too harsh. Prior to the hearing, the Deputy Director agreed to reduce the penalty slightly in order to account for the time Mr. Cadorette voluntarily refrained from hunting between the time of the incident and the date of the Deputy Director's decision.

With the consent of the parties, the Board ordered that the Deputy Director's decision be amended to reduce Mr. Cadorette's hunting prohibition by two years.

1999-WIL-033 Lyall Haines v. Deputy Director of Wildlife

Decision Date: April 11, 2000

Panel: Toby Vigod

Mr. Haines appealed a decision of the

Deputy Director of Wildlife on the basis that the penalty imposed was too harsh. The Deputy Director agreed to reduce the penalty slightly in order to account for the time that Mr. Haines voluntarily refrained from hunting between the time of the incident and the date of the Deputy Director's decision.

With the consent of the parties, the Board ordered that the Deputy Director's decision be amended to reduce Mr. Haines' hunting prohibition by two years.

1999-WIL-034 Eric Christian v. Conservation Officer

Decision Date: April 13, 2000

Panel: Toby Vigod

This was an appeal by Eric Christian against a decision of a Conservation Officer refusing Mr. Christian a permit to possess a set of antlers from a dead Vancouver Island Black Tailed Deer that he found along a roadside in Campbell River. The deer possessed a very unique set of antlers for a Vancouver Island Black Tailed Deer. Mr. Christian sought an order requiring the Conservation Officer to issue him a permit for possession of the antlers.

The Board found that the Conservation Officer correctly weighed the benefits of government use versus private possession in deciding not to issue a permit in this case. The Board agreed with the Conservation Officer that the unique set of antlers would provide a greater benefit if they are available for public viewing through educational use by the Ministry of Environment, Lands and Parks, than if they are mounted in Mr. Christian's home. The appeal was dismissed.

1999-WIL-035 William Severs v. Deputy Director of Wildlife

Decision Date: September 27, 2000

Panel: Alan Andison

William Severs appealed a decision of the Deputy Director of Wildlife to cancel his hunting licence for approximately three years, and to order him to successfully complete the CORE program before his hunting privileges could be reinstated. The Deputy Director's decision was based on Mr. Severs having been charged under the *Wildlife Act* for his involvement in harvesting a moose claimed to be harvested by another.

By consent of the parties, the Board ordered that the penalty imposed by the Deputy Director be reduced, making Mr. Severs eligible to apply for a new hunting licence after July 1, 2001, instead of December 31, 2002.

1999-WIL-036 Craig Kohorst v. Deputy Director of Wildlife

Decision Date: October 17, 2000

Panel: Cindy Derkaz

Craig Kohorst appealed a decision of the Deputy Director of Wildlife to cancel his hunting licence for a period of approximately one year and eight months. The decision further required that Mr. Kohorst successfully complete the CORE program before his licence would be reinstated.

The Deputy Director's decision was based on Mr. Kohorst having been charged with three offences under the *Wildlife Act* as a result of shooting a less-than-full-curl ram in full-curl season. Two of the charges were stayed, while Mr. Kohorst pled guilty to the third charge of failing to retrieve the edible portions of wildlife. Mr. Kohorst submitted that the cancellation period was excessive, considering that he had exercised due diligence in shooting the ram. Mr. Kohorst stated that he had an honest, although mistaken, belief that the ram was full-curl, and that

the reason he could not adequately retrieve the wildlife was due to a leg injury that he sustained earlier in the day.

The Board found that the Deputy Director's decision was reasonable in the circumstances. In particular, the Board noted that although Mr. Kohorst was an experienced hunter who had no previous record of convictions, the offence nonetheless displayed poor hunting ethics, and directly impacted on wildlife resources. The Board also determined that the cancellation period imposed in this case was generally consistent with other hunting licence cancellation cases. The appeal was dismissed.

2000-WIL-003 Max Searls v. Deputy Director of Wildlife

Decision Date: September 13, 2000

Panel: Carol Quin

Max Searls, a hunting guide in the Williams Lake area, appealed a decision of the Deputy Director of Wildlife to cancel his hunting and firearm licences. The decision further specified that Mr. Searls would be ineligible to hold a new hunting licence for a period of approximately two-and-a-half years, and that Mr. Searls would be required to successfully complete the CORE program before his licences would be reinstated.

The Deputy Director's decision was based on Mr. Searls having been charged and convicted of two offences under the *Wildlife Act* within a two-year period (lending his rifle and guide map to a non-resident unlicenced hunter, and shooting a less-than-full-curl ram in full-curl season). Mr. Searls submitted that the Deputy Director's decision was unreasonable for two reasons. First, as a guide, he requires his licences for his business, which is his only source of income. Second, regarding the ram, he felt certain that it was full-curl at the time of the shooting.

The Board found that the Deputy Director's decision was reasonable in the circumstances. In particular, the Board noted that Mr. Searls' past record indicated a variety of previous charges and violations. The Board also accepted that big horn sheep were a valuable resource found in limited numbers in the area, and that Mr. Searls should have taken additional care before shooting the ram to ensure that it met the appropriate specifications. The appeal was dismissed.

2000-WIL-005 James Elliott v. Deputy Director of Wildlife

Decision Date: June 6, 2000

Panel: Toby Vigod

James Elliott appealed a decision of the Deputy Director of Wildlife to cancel Mr. Elliott's hunting licence for approximately 9 months, and to order him to successfully complete the CORE program before his hunting privileges could be reinstated. The Deputy Director based his decision on Mr. Elliott being found in violation of section 13(7) of the *Hunting Regulation* for failing to keep the antlers of the moose available for inspection. Mr. Elliott sought a rescission of the order.

The Board found, on a balance of probabilities, that Mr. Elliott did not possess the antlers of the moose he claimed to have killed and quartered. The Board noted that the need to set an example for general deterrence of this offence was a sufficient and valid reason for revoking the hunting licence. The appeal was dismissed.

2000-WIL-008 Hans Wittwer v. Regional Wildlife Manager

Decision Date: November 6, 2000

Panel: Carol Quin

Hans Wittwer appealed a decision of the Regional Wildlife Manager to refuse to issue Mr. Wittwer a quota of 100 guided angler days on the classified portion of the Chilko River.

Mr. Wittwer, who had recently purchased the Chilko River Lodge, submitted that a 100-day quota belongs to the Lodge, as this quota was originally issued to the owner of the Lodge, and was intended to allow the existing business to continue fishing operations when the quota system first came into effect. Mr. Wittwer further submitted that the 100-day quota currently held by Mr. Betz, who was the previous manager of the Lodge, should be transferred back to the Lodge in accordance with the purchase agreement. Mr. Wittwer also noted that Mr. Betz is no longer using the quota, nor is he operating in accordance with his approved operation plan.

The Board found that an angler day quota is only to be held by a natural person, and not a corporate entity. The Board also found that there is no legal means for the Regional Wildlife Manager to directly allocate a 100-day quota to Mr. Wittwer. In particular, the Board agreed that the Regional Wildlife Manager does not have the authority to force the transfer of a quota from one guide to another, and that it is not up to the Regional Wildlife Manager to enforce a condition of the purchase agreement between Mr. Wittwer and the previous owner of the Lodge. The Board found that the Regional Wildlife Manager is in the process of ascertaining whether Mr. Betz is operating in accordance with his operation plan. The Board noted that if the Regional Wildlife Manager decides to cancel Mr. Betz's quota, the guided angler days would revert back to the Crown for reallocation and, as such, there is no authority to directly allocate these days to Mr. Wittwer. Accordingly, the Board found that the Regional Wildlife Manager did not err in refusing Mr. Wittwer's application. The appeal was dismissed.

2000-WIL-011 Michael Bradley Aydon v. Deputy Director of Wildlife

Decision Date: October 23, 2000

Panel: Alan Andison

Michael Bradley Aydon appealed a decision of the Deputy Director of Wildlife to cancel his hunting licence for approximately 15 months, to declare him ineligible to apply for the limited entry hunt draw until July 1, 2001, and to order him to successfully complete the CORE program before his hunting privileges could be reinstated. The Deputy Director's decision was based on Mr. Aydon having been charged and convicted under the *Wildlife Act* for making a false statement to a Conservation Officer, fishing without an angling licence, and fishing with more than one fishing line.

By consent of the parties, the Board ordered that the penalty imposed by the Deputy Director be reduced, such that Mr. Aydon would be eligible to apply for the limited entry hunt draw on January 6, 2001, instead of July 1, 2001.

2000-WIL-013 Lynne Luker v. Regional Wildlife Section Head

Decision Date: September 27, 2000

Panel: Alan Andison

Lynne Luker appealed a decision of the Regional Wildlife Section Head refusing Ms. Luker a permit to possess a dead cougar that had been struck by a motor vehicle along a highway near Cranbrook. Ms. Luker was made aware of the cougar through her job as an RCMP dispatcher, and requested a possession permit so that she could have the animal mounted. Ms. Luker sought an order from the Board granting her a permit to possess the dead cougar.

The Board found that the decision to deny Ms. Luker a permit did not contain reasons. However, this defect was cured because the

Regional Wildlife Section Head subsequently provided reasons, and Ms. Luker had been given the opportunity to make submissions on these reasons. The Board found that the Regional Wildlife Section Head correctly weighed the benefits of commercial sale versus private possession in deciding not to issue a permit in this case. The Board accepted that the cougar was of some commercial value, and that receiving compensation for Crown property would provide a greater benefit to the public than if the animal was mounted in Ms. Luker's home. The appeal was dismissed.

2000-WIL-014(a) Frank Schroeder v. Deputy Director of Wildlife

Decision Date: September 15, 2000

Panel: Alan Andison

Frank Schroeder applied for a stay of the decision of the Deputy Director of Wildlife to cancel his angling, hunting, and firearms licences, pending an appeal on the merits of the case. The decision specified a cancellation period of approximately six years for the hunting licence, and approximately one year for the angling and firearms licences.

The application for a stay was refused.

2000-WIL-014(b) Frank Schroeder v. Deputy Director of Wildlife

Decision Date: November 3, 2000

Panel: Alan Andison

This was an appeal by Mr. Schroeder of the decision of the Deputy Director of Wildlife to cancel Mr. Schroeder's angling, hunting and firearms licences. The decision specified a cancellation period of approximately six years for the hunting licence, and approximately one year for the angling and firearms licences.

The Deputy Director's decision was based on Mr. Schroeder having been charged with several criminal offences, and having been criminally convicted for accepting money in exchange for providing favourable test scores to a student in the CORE program. Mr. Schroeder submitted that the decision to cancel his licences was unreasonable because he had already suffered penal consequences for his conviction, and his other criminal charges should not have been taken into account because they were stayed by the Crown.

The Board found that the Deputy Director's decision was reasonable in the circumstances. In particular, the Board recognized the importance of the CORE program in ensuring that hunters have proper knowledge of safe and responsible hunting practices. The Board found that by accepting money in exchange for CORE certification, Mr. Schroeder had seriously compromised the effective management of the province's wildlife resources. The Board also found that it was proper for the Deputy Director to consider Mr. Schroeder's other criminal charges, as they were directly relevant to the case at hand. Accordingly, the Board dismissed the appeal.

Summaries of Court Decisions Related to the Board

British Columbia Hydro and Power Authority v. Environmental Appeal Board

Decision Date: April 6, 2000 (oral reasons)
Court: S.C.B.C., Mr. Justice R.T.A. Low

This was a judicial review of the Environmental Appeal Board's decision in Appeal Nos. 1998-WAS-014(b) and 1998-WAS-028(a). The Board found that BC Hydro and Power Authority ("BC Hydro") was a "person responsible" for remediation at a contaminated site pursuant to section 26.5 of the *Waste Management Act*, as a result of its amalgamation with B.C. Electric Company and B.C. Power Commission on August 20, 1965. B.C. Electric had manufactured and delivered coal tar to the site for some years before the amalgamation.

BC Hydro argued that the Board erred in law in its interpretation of the final words of clause 1(c) of the amalgamation agreement, which states:

> (1)(c) The Authority...shall be liable for all duties, liabilities and obligations, whether conferred or imposed by statute or otherwise of each of the authority, the Company and the Commission immediately before the amalgamation.

"Authority" refers to BC Hydro and "Company" refers to B.C. Electric.

BC Hydro argued that the plain meaning of the concluding words of that clause is that BC Hydro assumed only those duties, liabilities and obligations of B.C. Electric that existed prior to the amalgamation.

The Court disagreed. It stated that "The intent of the *Waste Management Act* is to make polluters responsible for the cleanup of environmental contamination." As such, if B.C. Electric was still in existence as a separate legal person, it would have been subject to being found a "person responsible" for cleanup. The Court agreed with the Board that the words "immediately before the amalgamation" are not words of limitation. The purpose of clause 1(c) was to prevent the expiration of B.C. Electric's legal responsibilities upon amalgamation by transferring those responsibilities to the new single entity formed from three pre-amalgamation entities. The words simply identified the date on which BC Hydro became the beneficiary of those duties, liabilities and obligations.

The Board's decision was upheld. The petition was dismissed with costs. BC Hydro argued that the plain meaning of the concluding words of that clause is that BC Hydro assumed only those duties, liabilities and obligations of B.C. Electric that existed prior to the amalgamation.

Abdul M. Mousa and Barbara Aweryn v. Environmental Appeal Board

Decision Date: July 21, 2000 (oral reasons)
Court: B.C.S.C., Mr. Justice I.B. Josephson

This was an application by Mr. Mousa for various forms of relief under the *Judicial Review Procedure Act* against the Simon Fraser Health Region (the "SFHR") and the Environmental Appeal Board. The application arises from Appeal No. 1999-HEA-004, where the Board upheld the decision of the SFHR to refuse to issue a permit for the repair of Mr. Mousa's sewage disposal system on the basis that the proposed repairs would not protect the public health. The SFHR then issued an order to Mr. Mousa, which set out exactly what was required of him in order to ensure that his septic system no longer constituted a health hazard.

Mr. Mousa's claim against the Board was based on a number of allegations, including bias and other improper conduct. He claimed that the method by which the Board published its decision was improper, and the role of counsel for the Board in drafting the decision was inappropriate. The Court found that these criticisms were all without reasonable foundation.

Mr. Mousa also claimed that his septic system should be permitted to continue as a non-conforming use, because a number of other residences in the area have similar septic systems that likely constitute health hazards. He also claimed that the tests done by the SFHR were unlawful in that they artificially introduced test liquid into his sewage system in such quantities that a failure was inevitable.

The Court applied the standard of review of patent unreasonableness to the Board's decision, and found that the petitioners had not demonstrated that the decision to withhold the repair permit was in error, let alone patently unreasonable. The Court also found no improper conduct on the part of the SFHR. The petition was dismissed with costs to the Board and the SFHR, and the SFHR was granted injunctive relief against Mr. Mousa.

Beazer East, Inc. v. Environmental Appeal Board et al.

Decision Date: November 24, 2000
Court: B.C.S.C., Mr. Justice D. Tysoe

Beazer East, Inc. ("Beazer") and Atlantic Industries Limited ("Atlantic") applied for judicial review of the decision of the Environmental Appeal Board in Appeal No. 1998-WAS-001(b), where the Board upheld the decision of the Assistant Regional Waste Manager to name Beazer and Atlantic as responsible persons in a remediation order issued under the *Waste Management Act*. The remediation order concerns a property located in Burnaby that was contaminated as a result of a wood treatment operation that took place on the site between 1931 and 1982. Atlantic was the operator of the wood treatment business, and Beazer is the parent corporation of Atlantic by virtue of owning a controlling interest in Atlantic's shares.

Beazer claimed that the Board erred when it found that: (i) Beazer was a responsible person by virtue of being a previous owner and operator of the site, (ii) Beazer was not entitled to an exemption on the basis that it was a person who provided assistance or advice respecting remediation work, and (iii) the Manager had not improperly exercised his discretion in naming Beazer to the remediation order.

Atlantic claimed that the Board erred by: (i) failing to consider equitable grounds, (ii) failing to relieve Atlantic of liability on the basis of private agreements, (iii) failing to find an abuse of process by the provincial Crown, (iv) failing to find that the Board has jurisdiction to stay the remediation order pending the outcome of the cost recovery/

allocation process, and (v) failing to find that the Manager had not properly exercised discretion in naming Atlantic to the remediation order.

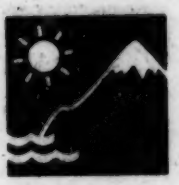
The Court applied the pragmatic and functional test to determine the appropriate standard of review to apply to the Board's decision. The Court considered the purpose of the *Waste Management Act*, which is to prevent pollution and to provide for remediation of contaminated sites, and found that a higher degree of deference is owed to the Board where the nature of the problem is one of mixed fact and law. However, the Court noted that the *Waste Management Act* does not contain a privative clause and that the issues of statutory interpretation in this case do not engage the Board's expertise, which point toward according a lower degree of deference. As a result, the Court found that the Board should be held to a standard of correctness for questions of law, such as the interpretation of a statutory provision, and a standard of reasonableness *simpliciter* for questions of mixed law and fact, such as the application of the legal test to the facts.

The Court found that the Board was correct in finding that Beazer was a responsible person on the basis that it was a previous operator of the site, but not on the basis that it was a previous owner. The Court, in finding that the Board erred in its interpretation of "owner", stated that the meaning of the phrase "right of control of...the use of real property" in the definition of "owner" referred to a legal right. The Court noted that a parent corporation does not have the legal right to control a subsidiary's use of assets, even though it may have an ability to control the subsidiary through other means (because the parent corporation can change the directors, who can change the officers, etc.). As such, the Court determined that the Board erred in finding that Beazer had a "right of control" of Atlantic's use of assets as a result of Beazer's requirement to approve Atlantic's property leases, as this was not a legally enforceable right.

The Court determined that the Board was correct when it found that the phrase "in control of...any operation" in the definition of "operator" related to factual control of an operation, and not actual control of day to day operations. However, the Court noted that the Board may have erred in interpreting the phrase "responsible for...any operation" in the definition of "operator" too narrowly to only refer to legal authority over an operation. In the end, the Court did not interfere with the Board's finding that Beazer was a responsible person by virtue of being a previous operator of the site. The Court also determined that the Board was correct in finding that the statutory exemption from liability for persons providing assistance or advice respecting remediation work did not apply to Beazer.

With respect to Atlantic's claims, the Court upheld the decision of the Board on all grounds. The Court found that the Board did not fail to consider equitable factors, and that the Board was correct when it restricted the interpretation of "private agreements" to mean only existing, legally enforceable agreements. The Court also found that there was no abuse of process by the provincial Crown, that it was not unreasonable to name Atlantic to the remediation order, and that the Board was correct in deciding that it had no jurisdiction to stay the remediation order pending the outcome of the cost recovery/allocation court proceedings.

The petition was dismissed.



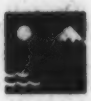
Summaries of Cabinet Decisions Related to the Board

There were no orders by Cabinet during this report period concerning decisions by the Board.

APPENDIX I

Legislation and Regulations

The Environmental Appeal Board is established under section 11 of the *Environment Management Act*. That Act defines the structure of the Board and provides the Board with the authority to hear appeals of administrative decisions made under six statutes. Three of the Statutes are administered by the Ministry of Water, Land and Air Protection. They are the *Pesticide Control Act*, the *Waste Management* Act and the *Wildlife* Act. Two of the statutes are administered by the Ministry of Sustainable Resource Development. They are the *Commercial River Rafting Act* and the *Water Act*. The sixth statute, the *Health Act*, is administered by the Ministry of Health Services and Health Boards. Relevant provisions from the *Environment Management Act*, the *Environmental Appeal Board Procedure Regulation*, and each of the statutes from which the Board hears appeals are reproduced below.



Environment Management Act

Environmental Appeal Board

11 (1) The Lieutenant Governor in Council must establish an Environmental Appeal Board to hear appeals that under the provisions of any other enactment are to be heard by the board.

(2) In relation to an appeal under another enactment the board has the powers given to it by that other enactment.

(3) The board consists of a chair, one or more vice chairs and other members the Lieutenant Governor in Council appoints.

(4) The Lieutenant Governor in Council may

(a) appoint persons as temporary members to deal with a matter before the board, or for a period or during circumstances the Lieutenant Governor in Council specifies, and

(b) designate a temporary member to act as chair or as a vice chair.

(5) A temporary member has, during the period or under the circumstances or for the purpose for which the person is appointed as a temporary member, all the powers of and may perform all the duties of a member of the board.

(6) The Lieutenant Governor in Council may determine the remuneration and expenses payable to the members of the board.

(7) The chair may organize the board into panels, each comprised of one or more members.

(8) The members of the board are to sit

(a) as a board, or

(b) as a panel of the board.

(9) If members sit as a panel,

(a) 2 or more panels may sit at the same time,

(b) the panel has all the jurisdiction of and may exercise and perform the powers and duties of the board, and

(c) an order, decision or action of the panel is an order, decision or action of the board.

(10) The number of members that constitute a quorum of the panel or a Board may be set by regulation of the Lieutenant Governor in Council.

(11) The board, a panel and each member have all the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the Inquiry Act.

(12) In an appeal, the board or a panel

(a) may hear any person, including a person the board or a panel invites to appear before it, and

(b) on request of

(i) the person,

(ii) a member of the body, or

(iii) a representative of the person or body,

whose decision is the subject of the appeal or review, must give that person or body full party status.

(13) A person or body that is given full party status under subsection (12) may

(a) be represented by counsel,

(b) present evidence,

(c) where there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(14) A person who gives oral evidence may be questioned by the board, a panel or the parties to the appeal.

(14.1) The appeal board may require the appellant to deposit with it an amount of money it considers sufficient to cover all or part of the anticipated costs of the respondent and the anticipated expenses of the appeal board in connection with the appeal.

(14.2) In addition to the powers referred to in subsection (2) but subject to the regulations, the appeal board may make orders for payment as follows:

(a) requiring a party to pay all or part of the costs of another party in connection with the appeal, as determined by the appeal board;

(b) if the appeal board considers that the conduct of a party has been vexatious, frivolous or abusive, requiring the party to pay all or part of the expenses of the appeal board in connection with the appeal.

(14.3) An order under subsection (14.2) may include directions respecting the disposition of money deposited under subsection (14.1).

(14.4) If a person or body given full party status under subsection (12) is an agent or representative of the government,

(a) an order under subsection (14.2) must not be made for or against the person or body, and

(b) an order under subsection (14.2)(a) may instead be made for or against the government.

(14.5) The costs required to be paid by the government under an order under subsection (14.4)(b) must be paid out of the consolidated revenue fund.

(15) If the board or a panel makes an order or

decision with respect to an appeal the chair must send a copy of the order or decision to the minister and to the parties.

Varying and rescinding orders of board

12 The Lieutenant Governor in Council may, in the public interest, vary or rescind an order or decision of the board.

Environmental Appeal Board Procedure Regulation

Interpretation

1 In this regulation

"Act" means the Environment Management Act;

"board" means the Environmental Appeal Board established under the Act;

"chairman" means the chairman of the board;

"minister" means the Minister of Environment, Lands and Parks;

"objector" in relation to an appeal to the board means a person who, under an express provision in another enactment, had the status of an objector in the matter from which the appeal is taken.

Application

2 This regulation applies to all appeals to the board.

Appeal practice and procedure

3 (1) Every appeal to the board shall be taken within the time allowed by the enactment that authorizes the appeal.

(2) Unless otherwise directed under the enactment that authorizes the appeal, an appellant shall give notice of the appeal by mailing a notice of appeal by registered mail to the chairman, or leaving it for him during business hours, at the address of the board.

(3) A notice of appeal shall contain the name and address of the appellant, the name of counsel or agent, if any, for the appellant, the address for service upon the appellant, grounds for appeal, particulars relative to the appeal and a statement of the nature of the order requested.

(4) The notice of appeal shall be signed by the appellant, or on his behalf by his counsel or agent, for each action, decision or order appealed against and the notice shall be accompanied by a fee of $25, payable to the Minister of Finance and Corporate Relations.

(5) Where a notice of appeal does not conform to subsections (3) and (4), the chairman may by mail or another method of delivery return the notice of appeal to the appellant together with written notice

(a) stating the deficiencies and requiring them to be corrected, and

(b) informing the appellant that under this section the board shall not be obliged to proceed with the appeal until a notice or amended notice of appeal, with the deficiencies corrected, is submitted to the chairman.

(6) Where a notice of appeal is returned under subsection (5) the board shall not be obliged to proceed with the appeal until the chairman receives an amended notice of appeal with the deficiencies corrected.

Procedure following receipt of notice of appeal

4 (1) On receipt of a notice of appeal, or, in a case where a notice of appeal is returned under section 3(5), on receipt of an amended notice of appeal with the deficiencies corrected, the chairman shall immediately acknowledge receipt by mailing or otherwise delivering an acknowledgement of receipt together with a copy of the notice of appeal or of the amended notice of appeal, as the case may be, to the appellant, the minister's office, the Minister of Health if the appeal relates to a matter under the Health Act, the official from whose decision the appeal is taken, the applicant, if he is a person other than the appellant, and any objectors.

(2) The chairman shall within 60 days of receipt of the notice of appeal or of the amended notice of appeal, as the case may be, determine whether the appeal is to be decided by members of the board sitting as a board or by members of the board sitting as a panel of the board and the chairman shall determine whether the board or the panel, as the case may be, will decide the appeal on the basis of a full hearing or from written submissions.

(3) Where the chairman determines that the appeal is to be decided by a panel of the board, he shall, within the time limited in subsection (2), designate the panel members and,

(a) if he is on the Board, he shall be its chairman,

(b) if he is not on the panel but a vice chairman of the board is, the vice chairman shall be its chairman, or

(c) if neither the chairman nor a vice chairman of the board is on the panel, the chairman shall designate one of the panel members to be the panel chairman.

(4) Within the time limited in subsection (2) the chairman shall, where he has determined that a full hearing shall be held, set the date, time and location of the hearing of the appeal and he shall notify the appellant, the minister's office, the Minister of Health if the appeal relates to a matter under the Health Act, the official from whose decision the appeal is taken, the applicant, if he is a person other than the appellant, and any objectors.

(5) Repealed. [B.C. Reg. 118/87, s.2.]

Quorum

5 (1) Where the members of the board sit as a board, 3 members, one of whom must be the chairman or vice chairman, constitute a quorum.

(2) Where members of the board sit as a panel of one, 3 or 5 members, then the panel chairman constitutes a quorum for the panel of one, the panel chairman plus one other member constitutes the quorum for a panel of 3 and the panel chairman plus 2 other members constitutes the quorum for a panel of 5.

Order of decision of the board or a panel

6 Where the board or a panel makes an order or decision with respect to an appeal, written reasons shall be given for the order or decision and the chairman shall, as soon as practical,

send a copy of the order or decision accompanied by the written reasons to the minister, the Minister of Health if the appeal relates to a matter under the Health Act, and to the parties.

Written briefs

7 Where the chairman has decided that a full hearing shall be held, the chairman in an appeal before the board, or the panel chairman in an appeal before a panel, may require the parties to submit written briefs in addition to giving oral evidence.

Public hearings

8 Hearings before the board or a panel of the board shall be open to the public.

Recording the proceedings

9 (1) Where a full hearing is held, the proceedings before the board or a panel of the board shall be taken using shorthand or a recorder, by a stenographer appointed by the chairman, for a hearing before the board, or by the panel chairman, for a hearing before the panel.

(2) Before acting, a stenographer who takes the proceedings before the board or a panel shall make oath that he shall truly and faithfully report the evidence.

(3) Where proceedings are taken as provided in this section by a stenographer so sworn, then it is not necessary that the evidence be read over to, or be signed by, the witness, but it is sufficient that the transcript of the proceedings be

(a) signed by the chairman or a member of the board, in the case of a hearing before the board, or by the panel chairman or a member of the panel, in the case of a hearing before the panel, and

(b) be accompanied by an affidavit of the stenographer that the transcript is a true report of the evidence.

Transcripts

10 On application to the chairman or panel chairman, as the case may be, a transcript of the proceedings, if any, before the board or the panel of the board shall be prepared at the cost of the person requesting it or, where there is more than one applicant for the transcript, by all of the applicants on a pro rata basis.

Representation before the board

11 Parties appearing before the board or a panel of the board may represent themselves personally or be represented by counsel or agent.

Commercial River Rafting Safety Act

Appeals

6 (1) If the registrar suspends or cancels a registration, licence or permit or refuses to register or issue a licence, the person may appeal to the Environmental Appeal Board established under the Environment Management Act.

(2) Section 40(2) to (7) of the Water Act applies to an appeal under subsection (1).

Health Act

Power to make regulations

8 (2) In addition to the matters set out in sub section (1), the Lieutenant Governor in Council may make regulations with respect to the following matters:

...

(m) the inspection, regulation and control, for the purposes of health protection provided in this Act, of

...

(ii) the location, design, installation, construction, operation and maintenance of

...

(C) sewage disposal systems,

...

and requiring a permit for them and requiring compliance with the conditions of the permit and authorizing inspections for that purpose;

...

(4) If a person is aggrieved by the issue or the refusal of a permit for a sewage disposal system under a regulation made under subsection (2)(m), the person may appeal that ruling to the Environmental Appeal Board established under section 11 of the Environment Management Act within 30 days of the ruling.

(5) On hearing an appeal under subsection (4), the Environmental Appeal Board may confirm, vary or rescind the ruling under appeal.

Pesticide Control Act

Appeals to Environmental Appeal Board

15 (1) For the purpose of this section, "decision" means an action, decision or order.

(2) Any person may appeal a decision of the administrator under this Act, or of any other person under this Act, to the appeal board.

(3) The time limit for commencing an appeal is the time limit prescribed by regulation.

(4) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the Environment Management Act, and

(b) subject to this Act, must be conducted in accordance with the Environment Management Act and the regulations under that Act.

(5) For the purposes of an appeal under this section, if a notice under this Act is sent by registered mail to the last known address of a person, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise,

whichever is earlier.

(6) The appeal board may conduct an appeal by way of a new hearing.

(7) On an appeal, the appeal board may

(a) send the matter back to the person

who made the decision being appealed, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(8) An appeal does not act as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Pesticide Control Act Regulation

Appeals

45 (1) A person who intends to appeal to the board against the action, decision or order of the administrator or of any other person under the Act shall file the appeal in the manner required by subsection (2) within 30 days from the date of the action, decision or order against which the appeal is taken.

(2) The appellant shall file the appeal by mailing notice of appeal by registered mail to the chairman, or leaving it for him during business hours, at the address of the board.

(3) A notice of appeal shall contain the name and address of the appellant, the name of counsel or agent, if any, for the appellant, the address for service upon the appellant, grounds for appeal, particulars relative to the appeal and a statement of the nature of the order requested, and shall be signed by the appellant or on his behalf by his counsel or agent.

(4) Where a notice of appeal does not con form to subsection (3), the chairman may by mail or another method of delivery return the notice of appeal to the appellant together with written notice

(a) stating the deficiencies and requiring them to be corrected, and

(b) informing the appellant that under this section the board shall not be obliged to proceed with the appeal until a notice or amended notice of appeal, with the deficiencies corrected, is submitted to the chairman.

(5) Where a notice of appeal is returned under subsection (4) the board shall not be obliged to proceed with the appeal until the chairman receives an amended notice of appeal with the deficiencies corrected.

(6) Repealed. [B.C. Reg. 132/82.]

(7) The procedures on the appeal shall be those set out in the Environmental Appeal Board Procedure Regulation.

Waste Management Act

Definition of "decision"

43 For the purpose of this Part, "decision" means

(a) the making of an order,

(b) the imposition of a requirement,

(c) an exercise of a power,

(d) the issue, amendment, renewal, suspension, refusal or cancellation of a permit, approval or operational certificate, and

(e) the inclusion in any order, permit, approval or operational certificate of any requirement or condition.

Appeals to Environmental Appeal Board

44 (1) Subject to this Part, a person aggrieved by a decision of a manager, director or district director may appeal the decision to the appeal board.

(2) Nothing in this section is to be construed as applying in respect of a decision made by the minister under this Act or by the Lieutenant Governor in Council.

Time limit for commencing appeal

45 The time limit for commencing an appeal is 30 days after notice of the decision being appealed is given

(a) to the person subject to the decision, or

(b) in accordance with the regulations.

Procedure on appeals

46 (1) An appeal under this Part

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the Environment Management Act, and

(b) subject to this Act, must be conducted in accordance with the Environment Management Act and the regulations under that Act.

(2) The appeal board may conduct an appeal by way of a new hearing.

Powers of appeal board in deciding appeal

47 On an appeal, the appeal board may

(a) send the matter back to the person who made the decision, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

Appeal does not operate as stay

48 An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Water Act

Appeals to Environmental Appeal Board

40 (1) An order of the comptroller, the regional water manager or an engineer may be appealed to the Environmental Appeal Board established under the Environment Management Act by

(a) the person who is subject to the order,

(b) an owner whose land is or is likely to be physically affected by the order, or

(c) a licensee, riparian owner or applicant for a licence who considers that their rights are or will be prejudiced by the order.

(2) The time limit for commencing an appeal is 30 days after notice of the order being appealed is given

(a) to the person subject to the order, or

(b) in accordance with the regulations.

(3) For the purposes of an appeal, if a notice under this Act is sent by registered mail to the last known address of a person, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise,

whichever is earlier.

(4) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the Environment Management Act, and

(b) subject to this Act, must be conducted in accordance with the Environment Management Act and the regulations under that Act.

(5) The appeal board may conduct an appeal by way of a new hearing.

(6) On an appeal, the appeal board may

(a) send the matter back to the comptroller, regional water manager or engineer, with directions,

(b) confirm, reverse or vary the order being appealed, or

(c) make any order that the person whose order is appealed could have made, and that the board considers appropriate in the circumstances.

(7) An appeal does not act as a stay or suspend the operation of the order being appealed unless the appeal board orders otherwise.

Wildlife Act

Appeals to Environmental Appeal Board

101.1(1) The affected person referred to in section 101(2) may appeal the decision to the Environmental Appeal Board established under the Environment Management Act.

(2) The time limit for commencing an appeal is 30 days after notice is given

(a) to the affected person under section 101(2), or

(b) in accordance with the regulations.

(3) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the Environment Management Act, and

(b) subject to this Act, must be conducted in accordance with the Environment Management Act and the regulations under that Act.

(4) The appeal board may conduct an appeal by way of a new hearing.

(5) On an appeal, the appeal board may

(a) send the matter back to the regional manager or director, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(6) An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.